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THE
RIGHTS
OF THE
BISHOPS

To JUDGE in
Capital Cafes
IN
PARLIAMENT,
C L E A R E D.

Being a Full Answer to Two Books Lately Published; The First Entitled, *A Letter from a Gentleman to his Friend, &c.* The other, *A Discourse of the Peerage and Jurisdiction of the Lords Spiritual in Parliament: Endeavouring to shew the Contrary.*

The Second Edition with Additions.

L O N D O N,
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THE
RIGHTS
OF THE
BISHOPS

To JUDGE in
Capital Cases

IN
PARLIAMENTS
CONVOKED

By JOHN H. BISHOP, Esq. of the Inner Temple, Barrister at Law.
LONDON: Printed by J. JOHNSON, in Pall-mall.

1794.

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TO THE READER.

THIS Book which is here put into thy hand, contains a Reply, and I hope a full and satisfactory one, to two small Treatises lately written concerning the Jurisdiction of the Lords Spiritual in Parliament; The first Entituled, A Letter of a Gentleman to his Friend, shewing, That the Bishops are not to be Judges in Parliament in Capital Cases. The second, A Discourse of the Peerage and Jurisdiction of the Lords Spiritual in Parliament, &c. Both of these pretend to be an Answer to another Treatise Published some few Months ago, entreating on the same Subject; and called, The Honours of the Lords Spiritual Asserted, &c. How well each party hath perform'd his Undertaking, and on whose side the Truth stands, the Impartial and knowing Reader is the fittest Judge; and therefore I shall not here go about to cast any odious or unbecoming Reflections upon either of those Books, or the Authors of them. No Ingenious or Knowing Person will misrepresent the Sence or Opinion of his Adversary, much less will entertain him with Reproach and Calumny, instead of Argument; a weak Cause may indeed stand in need of such Supports; but a good one will condemn them: If the Latter of these Authors have employed and made use of any such Auxiliaries in his Preface, where he goes about to make in at Author he pretends to refute, to speak things not only false but impossible; as that the Gentlemen of the House of Commons in the last Parliament, were the persons that threw down Episcopacy in 44, when either they, or a great part of them were then unborn, or their Fathers by their Princes Command in open Field at that time asserting it; that these, when as yet they were not in being, or at most but Infants and Children, should plunder and rifle their own Fathers Houses; or that their Fathers should at last spill their Princes Blood, for the saving whereof they lost their own, are strange Inventions; Thoughts, I am sure, never entered (if he believed what himself wrote) into any Bodies Head but his own; In those his Atchievements he shall not be followed by me. His Adversary in his Preface is plain; Those against whom his Discourse (he there saith) is aimed, are the Remainders of the Men of 42, who plead for, and justify the Late Rebellious Commotions in Scotland, who have been Actors of these in our own Kingdom; who in those late ill times broke through all Obligations both Sacred and Civil, to undo a Kingdom, &c. These are the men, (and from my heart I wish this Author is not one) who for other and By-Ends raise Jealousies and Divisions at this so Evil and Critical a Time, when rather we should be all of us joyning against the Common Adversary: I am heartily sorry that the Gentleman hath made himself so Signal an Instance for want of Candor and Veracity, and that his Reader should have occasion from hence to gather what he may expect in his Book, such
Exploits

To the Reader.

Exploits and Victories as these, as Hannibal said of his at Cannæ, will undo him; if he is a person that lies under no Temptation from Religion, a secure man, above either Honour or Conscience, this palpable Detection of him will not ('tis to be feared) bring him to a Palinode & Retraction; but if otherwise, he will I hope, do himself and that Author the Right as openly to acknowledge the Injury, as he hath causlessly misreported him.

As to the Books themselves; there is nothing I am perswaded in either of those Treatises which is not here fairly Answered, without either Raillery or Misrepresentation; those excellent Epithetes of Petulant, Impertinent, Ignorant and Impudent, with which he doth so plentifully bedeck his Adversary, are (I think) very fit Lading for his Dung-Carts and Oyster-Boats; and if the Gentleman be a Dealer, and uses to trade in such Commodities, I heartily wish him a Good Mart to vend them in; and that in his Next Adventure he may be a greater Gainer than he hath been now by this Bargain. And thus, in short, I refer the Matter in Debate to our Readers Judgment in the perusal of this Book. Farewel.

THE RIGHTS OF THE BISHOPS To JUDGE in CAPITAL CASES IN PARLIAMENT CLEAR'D.

Being a Full ANSWER to the late LETTER of a
GENTLEMAN to his FRIEND, Entreat-
ing to shew the Contrary.

Seeing the Gentleman who is the Author of the Letter that pre-
tends to shew, that Bishops are not Judges in Parliament in Ca-
pital Causes, either in giving the judgment it self, or in resol-
ving and determining of any Circumstance, preparatory and
leading to that Judgment (for so he States the Question, pag. 1.) hath
thought fit to take the Method, which he thought the fittest for his pur-
pose, to run through all the Rolls of Parliament that are extant in the Towers,
and to take notice (as he saith he hath done) of all the Tryals there Redor-
ded, as well in Cases Capital as those which are not so; and to shew the
difference in the Parliamentary proceedings upon them, how the Bishops
and Prelates did commonly joyn with the Temporal Lords, in Judging
those that were not Capital, and yet not always so, when the Crimes were
of a bigger Magnitude, and yet never but once, when the Accusation was
for a Capital Crime, which was in the Case of the Duke of Suffolk, 18. Hen. 6.

when the whole Proceeding (as the Author gives out) was so irregular and unparliamentary [an assertion by the by] very usual with him when any Precedent toucheth him to the quick, as that of the Bishops appointing Proxys three times in one Parliament 21. Rich. 2. this he calls Unparliamentary, Unusual, pag. 28, 30. Irregular, p. 79. and which is declared (as he confesseth) the exact Law of the Land in the Year Book of 10. Edw. 4. Term. Pasch. n. 35. This he calls *Error Temporis*, and this it seems is his ordinary way of answering to the Precedents and Law that make any way against his Assertion; that they are Irregular, Unusual, Unparliamentary, Extravagant and *Erroris temporis*, great mistakes of those times. A sharp Sword I must confess this Gentleman wears, one of the Younger House to that of the great Scuder, that can easily (so trusty and trenchant is his *Toledo*) cut asunder the most Gordian Knot, which cannot otherwise be untied, but by the way, this may be thought rather to make for the Gentlemans strength and valour in the dispatch, than any extraordinary Skill or Art in the Performance.

Seeing this I say is the way which this Author takes, I shall endeavour to follow him ~~word by word~~, step by step, and shall take notice of any thing that hath been offered by him, that is any ways material or advantageous to make out his Assertion, and I hope give a brief but a satisfactory account of his whole Book, and the Cases therein mentioned and set down, that they are not in any wise Argumentative to prove the thing in Question, and what this Gentleman undertakes to evince, viz. That the Bishops are not to be Judges in Capital Causes in Parliament: But before I do this, I shall lay down some Concessions and Assertions of this Author, which I shall make use of as Hypotheses and Postulata's? [for what is more equitable, than that a man should be just to, and stand or fall to his own Word and Grant or Concession] by which it will plainly and easily appear, he hath unfortunately engaged in this Quarrel by granting the thing he seems to deny, and so indeed and in truth pleads and argues for what he intends to write against: which is in Effect the Man against Himself.

It is agreed on betwixt us, [for seeing the Gentleman is so liberal, what he gives and grants, I shall, as tis just for me to do, accept and make use of] and tis Confest especially by this Author, in the Parliament of the 11. of Ric. 2. the Protestation of the Lords Spiritual therein to be a perfect and compleat Law, pag. 74. which I shall exactly set down, and shall do it faithfully, which is not done by the Gentleman, as shall afterwards be made appear, for that he hath left out the most considerable things therein that make against him, nay indeed which turn the Ballance and prove quite the contrary to what he undertakes to Evince: That the Bishops by the Law and Custome of England, (*de jure & Consuetudine Regni* are the Words) may as Peers of the Kingdom be personally present in all Parliaments, and there Consult, Vote, Enact and Determine of the Affairs of the Kingdom, and of all other matters there accustomed to be Treated of, as well as any other Peer of the said Kingdom, and to do every other thing which in time of Parliament

liament is to be done. The Protestation I shall here subjoyn, and give you an account afterwards of what the Gentleman hath set down of the rest of it which makes directly against himself, that he thought fit, for Reasons he knew of, to smother and conceal, at least not to acquaint his Reader with, which had he done, his Pains and Labour in the Affair might well have been spared. The Protestation is as followeth,

IN Dei Nomine, Amen. Cum de Jure & consuetudine regni Angl. ad Archiep. Canturbur. qui pro tempore fuerit, nec non Ceteros suos suffraganeos, Contratres & Coepisc. Abbates & Priores, aliosque Prelatos, quoscunque per Baroniam de domino nostro Rege tenentes pertinet in Parliamentis Regis quibuscunque ut Pares regni predicti personaliter interesse ibidemque de regni negotiis & aliis ibi tractari consuetis, cum ceteris dicti regni paribus & aliis ibidem ius interessendi habentibus consulere & tractare, ordinare statuere & definire ac cetera facere que Parliamenti tempore ibid. iminent faciend. in quibus omnibus & singulis nos Willielmus Cant. Archiepiscopus totius Angl. Primas & Apostolicæ Sedis Legatus, pro nobis nostrisque Suffraganeis, Coep. & confratribus, nec non Abbatibus, Prioribus & Prelatis, omnibus supradictis protestamur, & eorum quilibet protestatur qui per se, vel procuratorem hic fuerit modo presens & publice & expresse quod intendimus & intendit, volumus ac vult eorum quilibet in hoc presenti Parlamento & aliis ut Pares regni predicti more solito interesse, considerare, tractare, ordinare, statuere & definire, ac cetera exercere cum ceteris ius interessendi habentibus in eisdem statu & ordine nostris, & eorum cuilibet in omnibus semper salvis. Verum, quia in presenti Parlamento agitur de nonnullis materiis, in quibus non licet nobis aut alicui eorum iuxta sacrorum Canonum instituta, quomodo libet personaliter interesse; ea propter pro nobis & eorum quolibet protestamur eorum quilibet hic presens etiam protestatur, quod non intendimus, nec volumus sicuti de Jure non possumus nec debemus, intendit, nec vult aliquis eorundem in presenti Parlamento, dum de huiusmodi materiis agitur vel agatur, quomodo libet interesse, sed nos & eorum quemlibet in ea parte penitus absentare, Jure Paritatis nostre, & cuilibet eorum interessendi in dicto Parlamento, quoad omnia & singula inibi exercenda nostris, & eorum cuilibet Statui & ordini congruentia in omnibus semper salvis. Ad hec in super protestamur, & eorum quilibet protestatur quod propter huiusmodi absentiam non intendimus, nec volumus, nec eorum aliquis intendit, vel vult quod processus habiti, & habendi in presenti Parlamento, super materiis antedictis, in quibus nec possumus, nec debemus, ut premititur interesse quantum ad nos & quemlibet eorum attinet futuris temporibus, quomodo libet impugnentur infirmantur seu etiam revocentur.

IN the Name of God Amen. Whereas by the Law and Custom of the Kingdom of England, It doth belong to the Arch-Bishop of Canterbury for the time being, and the other his Suffragans, Brethren; and fellow Bishops, Abbots, and Priors, and all other Prelates whatsoever, who hold by Barony of our Lord the King, to be personally present in all Parliaments whatsoever, as Peers of the Kingdom, and there to Consult, Treat of, Ordain, Constitute, and Determine of the Affairs of the Kingdom and other things there usually treated of, together with the rest of the Peers of the said Kingdom, and others having interest there; and to do all other things which there may happen to be done. In all and every of which, We William Arch-bishop of Canterbury, Primate of all England, and Legate of the Apostolick See, do Protest for our Selves, our Suffragans

Suffragans and Fellow Bishops, and all the Abbots, Priors, and Prelates aforesaid, and every one of them doth Protest by themselves, or by his Proxy, if so be was present, both publickly and expressly, that we intend, and do intend, and every one of us will in this present Parliament, and in all others, be present as Peers of the said Kingdom, in the usual manner, to consider of, Treat, Enact, Constitute, and Determine; and to do all other things with others who have power of being present in the same, our Estate and Order, to every one of us in all things saved unto us entire. But because in this present Parliament, some matters will be Treated of, in which it is not lawfull for us, or any of us according to the **Institutions of the Holy Canons or Canon Law** in any wise to be Personally present: Therefore for our selves, and for every one of us, We Protest, and every one of us here present doth Protest, That We intend not, neither will, as by the Law We cannot, neither doth any of us intend, nor will any of us in any wise be present in this present Parliament whilst any of those matters are Debated, or shall be Debated of. But upon that account We and every one of us will absent our selves, the Right of our Peerage, and the Right of every one of us being present in the said Parliament, as to all and every thing there to be done agreeable to our Estate and Order in all things to every one of us saved entire. Moreover we Protest, and every one of us doth Protest, that by reason of our absence as aforesaid, we intend not, nor will, neither doth any one of us intend or will, that the Process had or to be had in this present Parliament in the matters aforesaid, in which we cannot and ought not as aforesaid to be present; as to what relates to us or any of us, shall in time to come be in any wise impugned, weakened or repealed.

And for a farther Discovery and Manifestation of the Rights of the Lords Spiritual to Judge in Criminal Causes in Parliament, I shall subjoyn a more full and ample Protestation on Record in the Parliament Roll of the 28 H. 6. wherein to make the matter out of all Controversie and future Question (to which this Author also for the Fact doth agree) viz. That it is there on Record, though he hath not Cited the Place faithfully and Ingenuously as he ought to have done; for that he hath as in the foregoing left out that which makes against him (for which he can never be excused) having Quoted what goes before and what follows after, and left out these Words, viz. **In case of their Peerage hereafter, as freely and as largely as they or any their Ancestors or Predecessors, &c.** which are the Ground and Foundation of the Lords Spiritual and Temporal their Protestation. And which beyond all contradiction makes it out to be the joint Right of both these two High and Honourable Estates: And not only I say and I think with some shew of Reason, (I will not say as this Author hath done on another account [with some Confidence] but Demonstration also do Evince the Position, which is quite contrary to what he undertakes to make out. That the Power of Judicature in Parliament is (on the account of their Peerage) the undoubted Right of both the Estates Spiritual and Temporal; and this will the more clearly appear, for that both the Lords Spiritual and Temporal here joyn in Asserting their joynt Rights, which the Lords Temporal would never have done, to their own disadvantage, by joyning themselves herein with the Lords Spiritual, and thereby avouching the Lords Spiritual Right to Judicature

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to stand on the same Foundation and Bottom with that of their own, (viz.)
As before on account of their Peerage.)

The Words of the Roll of Parliament are these:
AND forthwith the Viscount Beaumont on the behalf of the said Lords Spiritual and Temporal, and by their Advice, Consent and Desire, recited, said and declared to the Kings Highness, That this that was so decreed concerning the Person of the said Duke, Will de la Pool Duke of Suffolke, was not by their Advice and Counsel, but was done by the Kings own Power, Grace and Rule, therefore they besought the King that this their saying might be Enacted in the Parliament Roll for their more Declaration & Testimony with this Protestation: That it should not be, nor turn in prejudice, nor derogation of them, their Heirs, nor of their Successors in time coming, nor that they may have and enjoy their Liberties and Freedoms in Case of their Peerage hereafter, as freely and as largely, as they, or any of their Ancestors had, and enjoyed before this time.

The occasion of this Protestation was, for that the King H. 6. had upon the Duke of Suffolks submission of himself to the Kings Pleasure, taken the Matters contained in the Bill for high Treason against him in Parliament, out of the Parliament to give Judgment therein solely and by himself in an extrajudicial manner. Hereupon the Lords Spiritual and Temporal by the mouth of Viscount Beaumont Protest as before. The matter and substance whereof our Author granteth and acknowledgeth onely with some, and they the most material Omissions as before. This he doth plainly and expressly pag. 47. But of the particular case and matter, I shall speak more fully when I come in order to it. Only I would have the Reader take notice that these matters were not unknown to the Author, but that he did most partially relate them in omitting the most principal matter in the Protestation.

II. 'Tis confest and agreed by the Gentleman, pag. 118. that in Cases of Attainder, which yet are Cases of Blood, the Bishops may nay ought to be present; and here matters of Blood are agitated as well as in the Judiciary of Parliament: And it will not be very material (in the Judgment of any considering Person) which way a mans Life is taken away, whether by way of Attainder or Impeachment, or both, so as his Life is taken away, for that there is in either way matter of Blood in Question: And then by this we may see, (viz. the Presence of the Bishops in Cases of Attainder as by him confest) that this *Law of Laws*, as he by way of Jeer calls it, was not looked upon by them in all Points and Circumstances, so indispensably obliging.

III. He acknowledgeth, That a whole House of Commons with their Speaker did solemnly, openly, and in full Parliament, Petition the then King in manner following: That forasmuch as divers Judgments in Parliaments had been heretofore undone and repealed, for that the Lords Spiritual were not present at those Judgments (they deeming that they ought not to be present in Judgment where matter of Blood was agitated, *Secundum Sacrorum Canonum instituta*, the Canon Law interdicting them) and so the Parliament then not being full [for no other reason can be given of the

Bishops absenting themselves, and of the Repeals which thereupon followed] That the King would command the *Bishops* to make some their common Procurator with sufficient Authority thereunto, which would put an end to all Controversies. The *Bishops*, (not Clergy) being severally examined, appointed Sir *Thomas de la Percy* their Proctor to Assent on their behalf, as by their publick instrument on Record in the Roll of Parliament it appeareth; and this they did do three times, either by publick instruments, or otherwise in three several Cases of Blood in the Parliament of the 21 or last Parliament of Ric. 2. And to what this Gentleman saith concerning its Repeal, I question not but to give him and the Reader full satisfaction both from the Authors Concessions, and from reason it self, that his answer herein is altogether insignificant, and so of no use to him as to the cause in hand, when I shall come to the particular matter it self: This he confesseth, and it is clear, and the Record saith the same was done at the Petition of the Commons, and particularly and expressly for the Reasons aforesaid. And my self as well as this Author can give you very good Reasons to make you confess and believe that the Commons would not have in this Coniuncture any new Priviledges to be granted to the Clergy, and therefore on necessity and for the common good, that Judgments had been Repealed, &c. upon no other ground; for that both Lords and Commons did both joyn against them, during this Kings Reign, as in the 20 of Ric. 2. and twice before in the Preceding Kings Reign, viz. 45 Edw. 3. where we have a complaint of both Lords and Commons that the Government of the Kingdom was in the hands of the Clergy, whereby they pretended that great mischiefs and damages happened to it, &c. therefore they require that Lay-men (you see the reason of all) might be made Principal Officers of the Kings Court and House, &c. to which the King returns them this answer *Le Roy lavisera*, a modest denial: And from King Richard his Successor they had a worse, an absolute chide, for which they afterwards humbled themselves and craved Pardon, *Cott. Abr. p. 362. numb. 16.* Now as to the Proceedings of Parliaments Repealed, because of the absence of the *Bishops*, what they were, and when they were, certainly the Speaker and Commons were ready to produce and to prove the fact if challenged, else the Prayer of their Petition had been groundless, if there had been no such Errors in Judgments on such accounts, & they are to be supposed (being nearer to these times, and so the things fresh in their memory) abler to produce them, than we at this distance of time, for tis not reasonable to think, (I speak as to the probability of Reason) that so Grave, Knowing, and Learned a Body as the House of Commons is, would openly in full Parliament, in so solemn a manner affirm a thing which could not be made out, and was not certain, and the contrary thereof so easie, if any such had been to be made appear. Now for the Author to demand from us what those Judgments in particular were at that distance of time is neither equitable nor rational, for how little of the Rolls of Parliament before those times do to us remain, there being no Records at all in the Tower, except some few Charters and their Exemplifications ancients than the first year of

of King *John*, all the rest from *William* the first his Reign till then being utterly lost, the first Parliament Rolls yet remaining are these of the 5, 8, 9, and 19. of *Edw.* 2. The Statute Roll of *Hen.* 3. *Edw.* 1. and *Ed.* 2. concerning onely some Statutes made in their Reigns, some Memorials of Acts and Ordinances made in the Reigns of *K. John*, *Hen.* 3. *Ed.* 1. and *Ed.* 2. the Rolls whereof are perished and quite lost. The reasons and occasions thereof *Mr. Primm* gives his Reader at large in his Preface to the Reader in the Abridgement of *Sir Robert Cotton*, and to which I refer the Author that he may not say tis a *thing begg'd*, or *gratis dictum*. Nay farther to shew the unreasonableness hereof, I will onely add this one supposition: If the House of Commons of the last or other preceeding Parliaments had made such a Petition to their Prince, and had so openly and solemnly averr'd a matter of Fact, and made it the ground of their Petition, and the thing in it self not so, the Author sure nor any reasonable person reflecting upon the learning and integrity of that great and honourable Body, will ever (I perswade my self) do it. Tis on Record in the Holy Writ, that *Solomon* spake three thousand Proverbs, and that his Songs were 1005, that he wrote of Trees from the Cedar that is in *Lebanon* even unto the *Hysop* that springeth out of the Wall, that he spoke of *Beasts* and of *Fowl*, of *Creeping* things and of *Fishes*, and yet no other Memorial of these Books are any where extant or on Record, but that they were on the other side is most certain. The same I say of those Judgments in Parliament which are lost, both those and these are to be reckoned *inter deperdita*, things which were once extant but now lost.

IV. Tis agreed on both sides betwixt the Author and my self: That upon the Kings taking the cognizance of a Cause of *Blood* then before the Lords in Parliament into his own hands, thereby to determine of it in an extraordinary way we find the Lords Spiritual and Temporal, openly by Protestation asserting their Judicature, that the Kings interposing should not in any wise in times to come be any prejudice, or any ways derogate from them or their Successors Rights; here was present the two Arch-bishops 1 3 Bishops, 2 Abbots, and the Prior of *St. John* of *Jerusalem*. The Protestation was made as the Author saith by Viscount *Beaumont*, pag. 47. and it was on the behalf of the Lords Spiritual as well as Temporal, and by their joint assent, advice, and desire, recited and declared to the Kings Highness, in manner and form following:

That this that was so decreed and done by his excellency concerning the person of *William de la Pool Duke of Suffolk*, proceeded not by their Advice and Counsel, but was done by the Kings own Demeanance and Rule, therefore they besought the King, that this their saying might be enacted in the Parliament Roll for their more declaration hereafter, together with the Protestation, that it should not be nor turn in Prejudice nor Derogation of them, their Heirs, nor of their Successors in time to come, but that they may have and enjoy their Liberties and freedoms in case of their Peerage as largely as ever their Ancestors or Predecessors ever had enjoyed before this time, *Vid. pag. 48.* where the Protestation is by him set down though the most material Words are there left out.

V. 'Tis agreed and confest by this Author, pag. 75. That there ought to be a distinction made betwixt the Matter of a Law, and the manner of its Enacting, and here the Gentleman speaks accurately and exactly, and distinguisheth of things that are to be distinguished. His words are these, pag. 75. By the way, Let me desire to be well understood, what I mean by saying this would make it a Law if it was none before, I do not mean the Protestation would be a Law; for a Protestation *Modo & Forma* cannot be a Law, but the subject matter of it was then Enacted. And pag. 77. Being approved of by Parliament, and there Enrolled, became then, and so continues to be the Law of the Kingdom, (mark that) For in those times, (here he gives you the Reason) all Laws were so made, only the substance of the Law was agreed upon in Parliament, by King, Lords, and Commons, and entred in the Journal Book, and the Kings Justices did afterwards draw it up into Form, and then publish it to be the known standing Law of the Land. And again, pag. 22, 23. *Quelle Protestation lebe en plein Parlement al instance & prier dudit d'Archevesque & les autre Prelatz Sufitz, est Enrolle ycy en Rolle du Parlement per Commandement du Roy & Assents des Seigneurs Temporelz & Communes.* Which Protestation being read in full Parliament at the instant desire of the Arch Bishop and other Prelates afore-said, is entered upon the Parliament Roll by the Kings Command with the assent of the Lords Temporal and Commons, which is all the Formality of Passing Laws in Parliament, that was used in those times, which was only to have it entered in the Roll or Journal Book, that such a thing was agreed upon by the King and the two Houses, then it was drawn into Form of a Law afterwards by the Justices and Kings Council when the Parliament was risen, so as whatever was the Law before, if it was only Canon Law, it is now come to be the Law and Rule of Parliament, and the Law of the Land but in truth it was so before, and was always so. Here I shall observe three things confest and owned by the Author, which afterwards when I come to speak to the particular Cases of his Book, I shall have occasion to make use of.

1. That the matter of this Protestation was a Law, and indeed and in truth, the very Law of the said Parliament both before and after this Parliament, the 11 Ric. 2:

2. That he accurately distinguisheth of the Subject matter of a Law, or to use his own Words, and the *Modus & Forma* of its enacting; and herein he doth well; for that otherwise a Law or Judgment of Parliament being Repealed, a Person might Illogically draw an Argument from its subject matter being Repealed, to the Repealing even of the manner and circumstances under which it did Pass, and so subvert the constitution of Parliament it self: as for Example, The Parliament held at Coventry under Hen. 6. Ann. Reg. 38. was Repealed in the 39th of the said King, wherein Richard Duke of York, the Earls of Warwick and Salisbury, and Northumberland, &c. and others, who were in the Battles of St. Albans, Blorebeath and Ludlow were all attainted and Condemned for Treason, and their Lands in Fee and Tail Forfeited.

This

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This Parliament I say was Repealed in the following Parliament, but for that those of the House of York and their Abbettors, Estates and Lives were at stake, if it had not been so Repealed; this was the true Reason of it, not the manner of the passing of that Law which was in the usual Form and Manner, as other Laws were formerly passed in Parliaments, in like manner in the 3d of Hen. 5. Richard Earl of Cambridge (of whose Tryal I shall afterwards speak) was in a Parliament of that Year Condemned for Treason, which Judgment was afterwards Repealed. I suppose if I should say this Judgment was Repealed, as indeed it was, *Ann. 1. Edw. 4.* made utterly void and evacuated, he would not say that it was done for the Form of Judgment passed on him by the Duke of Clarence and other Peers, Earls and Barons at Southhampton, for the Form of Passing that Judgment was very Regular and Parliamentary, in regard, as he saith, the Lords Spiritual were not there, the Gentleman would deny utterly, and say, *was according to the Law and usage of Parliament*, for that only Temporal Lords have to do in those Judgments, but it was onely for the Subject matter of the Judgment, that it was Reversed for that he was a Yorkist and ~~reversus~~ *for that reason only* Inet that there was any thing irregular in the Form of Proceeding against him. These things then laid down as things agreed on by both sides, I shall make use of them in the subsequent Discourse as Postulata's and Hypotheses, things out of all question, and confest on all hands, and shall in Argumentation make use of them as Principles in the subsequent discourse, and I do perswade my self, they will prove *Topics*, very disadvantageous to our Author and the Cause he undertakes to make good, and that if he had carefully reflected on the consequences which do most naturally and most necessarily follow from such Concessions as these are, that even he himself would have had sufficient matter for his conviction, and that my pains and the Readers trouble, as well as this Controversie would have been at an end.

The first Judgment he mentions is p. 6. of Roger Mortimer E. of March, Simon Bereford, &c. these he saith, were Accused and Tried in Parliament, but the Roll is so defaced as it cannot be read. Well then here is no proof how that Tryal was managed, or how these Malefactors were Judged, whether by the Lords Temporal only, or by both Spiritual and Temporal. But he makes it out it was by the Lords Temporal only, from the 28 of Edw. 3. where Roger Wigmore Cousin to that Earl March desires that that ~~attainder~~ *may be Examined*, and that by the whole Proceedings there repeated (he saith) it appears none of the Prelates were Present. I Answer 1. this he saith, (and if he say truth, he hath said just nothing to the Purpose) *was an Attainder*, pag. 6. And if an Attainder, then from the Second Principle by me laid down, and by him granted, pag. 118. *The Bishops either were or should have been present at it*; and if so, it is no Precedent to prove the thing this Author brought it for; for that it proves the quite contrary, that Bishops are to Act in Capital Causes in Parliament, in regard it being as he saith an Attainder at which the Bishops should be present, as he confesseth, pag. 104.

2. And if they were not present in this Attainder, it seems they looked

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upon it as no Diminution of their Rights being their own voluntary Act; and this Author doth not argue that they loose their Right, for he saith it *still remains to them in Attainders reserved intire*, and if they were not present at this Attainder, and yet lost none of their Rights by their absence, why may they not as at other times withdraw when they please from the Judicature of Parliament, and yet without any Diminution to their Rights.

3. As to his reasons he brings to prove the Bishops were not present, they are weak and unconcluding; for he saith, *That Bishops cannot be understood to be comprehended under the word Peers, since the Barons are named first in the Record, Les queux Countes Barons & Pieres*. For that I find the contrary, *Pieres* many times put before Barons, particularly in Mr. Seldens *Baronage*, pag. 12. *ex Rot. Parliamenti 4 Ed. 3. memb. 3.* thus [the very same Parliament wherein this Tryal was] *Witness the Peers, Earls, and Barons assembled in this Parliament, &c. That John Mautravers is guilty of the Death of Edmund Earl of Kent, the Uncle of our Lord the King that now is, as he that Traiterously and falsely compassed the Death of the said Earl, &c. for which the said Peers of the Land, and Judges of the Parliament, Adjudge and Award, That the said John be Drawn, Hang'd and Quartered as a Traitor, &c.* And for what he saith in the last place, *That they cannot be comprehended under the word Peers, because they cannot pretend to be Peers of the Realm*, I do aver the contrary to be true for I find it 3 several times in the 1st of Rich. 2. particularly in the Protestation which this Gentleman confesseth is a perfect and compleat Act of Parliament, pag. 74. *ut pares Regni pcedat personaliter*. And again, *ut pares regni pcedat more solito interesse*. And afterwards, *Jure paritatis nostre & cuilibet eorum interessendi in omnibus, &c. semper saluo*. We protest we may be present, say they, (See the Protestation before at large, and faithfully Recited without the Omission of any thing) as Peers of the said Kingdom, be Personally present in all Parliaments whatsoever, and there Consult of, Ordain, Constitute and Determine of all Affairs of the Kingdom, and of all others there usually treated of, together with the rest of the Peers of England, &c. Again, We Protest, both publicly and expressly, that we intend to be, and every one of us will be present in this Parliament, as Peers of the said Kingdom in the usual manner, to Consider of, Treat of, and Ordain, &c. And lastly, say they (in this confest Law and, compleat Law, for so the Author calls it) pag. 74. We Protest that we will not be present in the present Parliament [while matters of Blood] are Created of, but will absent our selves, the Right of our Peerage, and of every one of us being present in the said Parliament, and our Right of doing all and every thing in the said Parliament in all things to us being kept entire. But these instances I give our Author as a few Prelibamina or foretastes of what I intend (God willing) to make out fully to him and the whole World, That the Lords Spiritual are Peers of the Realm, which is the thing he here and elsewhere utterly denies; the thing shall be made out in its proper place. Having dispatcht the Case of Mortimer, we shall proceed according to our Author, to the next Parliament of the 5th of Edw. 3. but in regard he hath not made good his Word, pag. 5. where he saith *He will run through all the Tryals on Record in the Tower*: and for that he hath left out four others in the same Parliament, (viz.) 4. Edw. 3. I shall subjoyn them, and I do perswade my self the Reader will see the Reason why our Author omitted

omitted those Tryals, for that they make against him, and do plainly shew that the Bishops according to his own Observation were present at those Tryals; the first is that of *Mautravers*, 4 Edw. 3. n. 7. *Quoniam* *Peers* *Counts & Barons* *Assemblez a ce Parliament a Westminster a une certaine estraitement & sur la son assentuz & accordez que Johan Mautravers est coupable de la mort Edmon Count de Kent le uncle nostre seigneur le Roy: quore est que principalement, Traiterousment, & fausement la morte le dit Count compassa, & par quore le ditz Peers de la terre & Judges du Parliament s'assentent & agardent que le dit Johan soit *Exécuté*, *pendu & decollé come Exécuté*. The whole *Peers* *Counts and Barons* assembled in this Parliament having straitly examined, &c. do Assent and Agree that John Mautravers is guilty of the Death of Edmund Earl of Kent, the Uncle of our Lord the King, for that he did Principally, Traiterously and Falsely compass the Death of the said Earl, &c. upon which the said Peers of the Realm and Judges of Parliament do Adjudge and Award that the said John be drawn, hang'd, and beheaded as a Traitor. The Persons here who are expressly called *Peers* of the Land, and Judges of the *Parliament*, are the Peers, Earls and Barons as at the beginning of the Record: Now our Author saith, pag. 7. That where *Peers* are named before *Earls and Barons*, where the Bishops may be comprised (I use his own Words) under the name of *Peers*. And if so then the Bishops were here present, and are *Peers* of the Land and Judges of *parliament* which is the thing in question, and which he utterly denies; and indeed to any person who is versed in the perusal of Records it is plain, that the word *Peers* being placed before the *Earls and Barons* it doth ever comprehend the Lords Spiritual, who always (according to the Plety of our Ancestors) are placed first in rank and order.*

The second is the case of *Boges de Boyons*, and *John Deverell*; Rot. Parlement, 4 Edw. 3. where by the same Persons, and for the Cause aforesaid; the same Judgment is pronounced against the said *Boges de Boyons*, and *John Deverell*, the Words of the Record are, *Entre ce antiel Judgment est accordez que soit fait de Boges de Boyons, & Johan Deverell per la cause susdite, &c.* It is agreed that the same Judgment be given against *Boges de Boyons*, and *John Deverel* for the Reason aforesaid.

The third Case is of *Thomas de la Gurnay* and *William Ocle*, for Murdering King Edw. the 2. the words of the Record are [the same Persons as before Judges] *Item a tien Judgment est assentuz & accordez de Thomas de Gurnay & VWilliam de Ocle pur la mort le Roy Edward pere nostre seigneur le Roy, quore est que fausement, et traiterousment lui muredrent, &c.* Moreover it is Assented and Agreed that the same Judgment be given against *Thomas de la Gournay* and *William Ocle* for the Death of *Edward the King*, the Father of our Lord the King, whom they Falsely and Traiterously Murdered.

The Fourth and last Case is of *Sir Thomas Berkley*, where the Judges are still the same, and the Record runs thus, Rot. Parl. 4. Edw. 3. *Thomas de la Berkley miles venit coram Domino rege in pleno Parlamento suo & allegatus de hoc quod cum dominus Edwardus nuper Rex Anglie pater Domini Regis nunc in custodia ipsius Thome & custodiam Johannis Mautravers nuper ex- tate decessus ad salvo custodiendum castro ipsius Thome apud Berkley in Comitatu Glouc. & in eodem castro in custodia ipsorum Thome & Johannis muredatus est & interfectus.* *Thomas Berkley Knight* came before the King in his full

full Parliament, and being charged, that whereas Edward late King of England the Father of Edward now King was delivered into the custody of the said Thomas Berkeley and John Mauleverers to be safely by them kept in the Castle of the said Thomas Mauleverers in Gloucestershire, and yet was murdered and slain in the said Castle, &c. What I now would have the Reader take notice of is this, That what was here done was in full Parliament, and therefore all the three Estates, the Lords Spiritual, Temporal, and Commons were present, for that I shall afterwards have occasion to make use of this instance, which the Reader may remember that what is said to be done in plain Parliament or full Parliament, there the whole three Estates are ever supposed to be present.

In the next place we come to the Parliament of the 5th of Edward the 3d. which was declared to be called for the redress of the breach of the Laws and of the Peace of the Kingdom, where our Author is very subtle in his observation on that Parliament; for that the Bishops were of Opinion, that it did not properly belong to them to be Conservators of the Peace (the Words in the Record are *Gardeins le meisme le Comte*) and therefore they desired to be excused, for they were not so able to advise the King in Affairs of that nature, as the other the *Grantz* the *Grandes* were, the words are *quil ne attenoit a la Prelatz pas properment a eux de Conseiler du guard de la Pece*.

It did not properly belong to the Bishops to give the King Counsel for the keeping of the Peace of his Kingdoms. Indeed had they said it did not at all belong to them to do it, it had been somewhat to the purpose; but saying only they were not so proper Judges. I believe this Gentleman hath not at all been fortunate in the choice of this Topick to draw his Argument from, against the Bishops; for that I find in the Parliament of the 7 of Rich. 2. the Commons to have been asked advice by the King concerning the making a Peace with France, that they then said, That it becomed them not to intermeddle with their Counsel therein, and therefore referred the whole Order thereof to the King and his Counsel, & tit. 17. being farther urged, they said They desired an honourable Peace for the King, but for that in the Articles were contained many terms of the Civil Law which they understood not, &c. they knew not what to say, &c. If this Author should hence argue, that for that the House of Commons, did then decline to give the King Advice as to Peace or War, they are not now to do it. I profess that I must deny his consequence, and desire his proof of it; for that I know it to be their Right to advice the King, *De Arduis Regni*, &c.

2. I desire the Author to take notice the Bishop of London was then Chancellor, through whose hands the Commissions for the keeping of the Peace did then pass, and it can hardly be imagined that he was not consulted in this matter. See *Cott. Abr.* 5 *Edw.* 3. tit. 3.

3. Our Author saith, That the Bishops cannot be comprehended under the word *Grantz*, and I must aver the contrary, for that the word *Grantz* is any Member of the House of Peers in opposition to the House of Commons. See for this, *Cott. Abr.* p. 65. *Kings Answer*. It seemeth good to the Counsel

to be done if it please the King by assent de Grantz to command the Commons being then before him in Parliament to advise him what they think best to be done in this case, wherein the Commons did declare their advise to the King and Grantz by a Bill in forme following, (viz.) *De Advisera sua la &c.* Here 'tis plain that the Grantz are in general the House of Peers, which I do the more desire the reader to take notice of for that our Author hath unhappily stumbled and fell upon this Stone more than once in his Book as I shall make hereafter to appear.

In the same Parliament there hapned a quarrel in the presence of the King betwixt Sir John Gray and Sir William de la Zouch, and that Sir John had *mis mein au Coteil* laid his Hand upon his Sword, whereupon they were both committed to prison, and the King did by the Mouth of Sir Geoffrey Scrope *toutz lez Countes, Barons & autre Grantz et les foies & ligeantes chargea &c.* Charged all the Earls, Barons and other great men in their faith and allegiances which they owe him, to give him Counsel what he ought to do upon such a *Grand* excess, great exorbitancy committed in his presence. Which they did by the acquitting of Zouch and the commitment of Gray. Here our Author saith, *There were no Bishops put to judge so much as of a battery.* And confesses they are not expressly named, but here are words that may include them; and if they were not present I cannot help it, and if they had been, pleased to have interposed in it, I do think they had not been very fit Judges in such matters of affrays, assaults, and batteries, which verily I think was the reason (if they were not then present) of their (if as is supposed) absenting themselves.

The next Parliament that was held (or taken notice of by our Author) was that of the 25 Edw. 3. where are enroll'd the Proceſs and Judgment against Sir William Thorp chief Justice for bribery, which our Author saith was *deyant les Grantz de Parlement pur s'aver ent leur avis & examine sur ceo chescun apres autre si sembla a eux toutz, &c.* and afterwards in the Roll of Parliament it is, *Sur ceo il fuit accords par le Grantz de mesme le Parlement, que si al autre tiel Cas. adaigne que nostre Seigneur le Roi preigne lui des Grantz que lui plairra pur per leur bon avis faire ceo que pleise a la Roiale Seigneurie.* This judgment, our Author saith, was brought before The great Men of Parliament, to have their advice upon it, and being all examined one after another, it seem to them all that they were just. Upon which it was agreed by those Grantz or grandees of Parliament that if any such case should happen, our Lord the King might take any one of those Grantz of Parliament whom he should please to do by their advice what he should think fit. Upon which passages in the Record our Author draws this conclusion, *That it cannot be understood that any Bishops were here under the name of Grantz with whom the King should advise.* For this could be no employment for Bishops, being to give judgment of Death. Which is the very matter in question. In good serious earnest is not this, *Petere principium*, to beg what you are to prove? I shall say nothing more to it, but only remind our Author of what is proved in my remarks on the Parlia-

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ment of the 5th of *Edw. 3.* that the word *Grantz* is the Peers House in opposition to the Commons, and to save my self the trouble of repeating the same thing twice over, I refer him to consider of what is (I think) clearly proved; but besides I shall give our Author an instance of a parallel case to this, which as one Article thereof mentioneth was for bribery, it is the case of *M. de la Pole* Lord Chancellor of England, accused by the Commons for misdemeanors (as himself confesseth) pag. 18. *deuant le Roi, Prelatz & Seigneurs*. Where note, though he calls them misdemeanors, the Commons who were accusers say and avouch the cause to be Capital, nay paralel it to this very case wherof I am speaking, the Replication of the Commons is this. And as to the Answer of the fifth Article the Commons prayed again, proposing the Example of one William Thorpe (the very instance now spoken of) late chief Justice of the Kings Bench, who surmising that he took 20 l. of one party who had an Office in plea before him, and for that he sold the Law, for which cause he was judged to Death, and forfeiture of his Lands and Chattels, and say in so much as the said Chancellor took a 100 l. &c. of the said provision there commanded to be delivered out of the Kings own profits, which he ought to have done according to the command of the King freely, without taking any thing, so he might to them that he hath sold the Law and given Judgment. Here we find the Lord Chancellor of England accused for taking bribes and selling the Law, and the Commons insisting on and paralleling these two cases and therefore Capital, and yet all this said, nay, it was done; as before *deuant le Roi, Prelatz & Seigneurs*, before the King, Prelats, and Lords. Which is the thing in question. See the Commons replication in Mr. Selden's Baronage, pag. 94.

In the 42 of *Edw. 3d.* Sir John Lee Steward of the King's House, was accused of misdemeanors; and the Record saith, *Et apres manger vinrent les Prelats, Ducs, Counts, Barons & aucuns de Communes & Alouens dont fait venit Mr. John Lee, &c.* After meat came the Prelates, Dukes, Earls, Barons, and some Commoners, and Sir John Lee was fetcht thither. At the Trial if any thing had been objected which had been Capital the Bishops were present at it.

In the Parliament of the 50th of *Edw. 3d.* we find several persons accused of very great Crimes, and some of which were in others Capital, as in the case of Gomenitz and Weston, in 1 Ric. 2. the Persons accused were Richard Lyons farmer of the Customs, For that he had imposed and procured to be put upon Wool, Skins, Leather, and other Merchandizes, certain new Impositions without assent of Parliament, without permission of the King, or of the high Treasurer of the Realm, having not medlage therewith; and of other great Crimes mentioned in this accusation. The second person was the Lord Latimer, who was accused for the loss of the Town and Fort of Saint Saviours in Normandy, while he was Captain there, and of the Town of Brotherel in Brittain, and of other Towns and Forts; likewise of sundry other great Extortions in Brittain, and that he had been partaker of all the evils of Richard Lyons. Vide Cott. Abr. pag. 122. The other persons were William Ellis of great Yarmouth, as accessory to Richard Lyons

Lyons aforesaid, and John Peach for getting to himself a Monopoly of sweet Wines, and the Lord John Nevil for buying Debts due to the King at undervalue, and for defrauding the King for Souldiers wages, &c. which Trials our Author confesseth that the Bishops were present. The Crimes were great and hainous, as raising money without Parliament, loss of Forts, a Crime Capital in Gomenitz and Weston; notorious oppression of the Subjects, and cheating of the King; these I presume are greater Crimes than a brable in the King's presence, yet at which our Author cannot allow the Bishops any Vote in the Judicatory. Now what I here observe are the particulars which follow,

1. In the Trials which were of these Men I find a Mention of the Lords of the Parliament, which some would have to be meant to be the Lords Temporal only, excluding the Bishops from that appellation, and here in the case of Lyons I find the contrary at the time of his Sentence; we shall find who were call'd Lords of the Parliament. Thereupon another time the said Richard was sent for before the **Lords of the Parliament** [let our Author take notice that the Bishops were now present] where it was said to him that it seemed to the **Lords**; our Author saith, The Bishops are never comprized under that name, and it cannot be imagined they should be under the general expression, & autres Seigneurs, Barons, &c. pag. 14. in the very next Trial of Gomenitz and Weston; which I desire him to remember when we come to it.

2. What before I hinted, The loss ofundry Forts and Towns, which were Capital cases; as to the Lord of Gomenitz and Weston, but not thought so now; and yet the Lords Spiritual confessed (and indeed in the Record they are said to be) present also. So that it is not most certain, what another and later Author hath said in the 15. p. That the Bishops are never spoken of in any Record, but either by the name of Archiepiscopi, Episcopi, or Prelati, or some such name to distinguish them from the Laity, and if they are spoken of, they are ever first named: So that that discourser may find them named here in a general word, **Seigneurs du Parlement**, and not in particular distinguishing names, as Episcopi, Prelati, &c. but of that Author and his Book more hereafter.

3. That at all these Trials the Bishops are said by him, and so indeed they were, to have been present; and no body says (saith he) but they might. So that now the Bishops are **Lords of Parliament**, and judging in a cause that might have been Capital.

But farther, that the World may no longer be amused and imposed upon in this Notion of the Gentleman and the discourser, that except the Bishops are particularly named they cannot be thought to be there. Let our Authors see the Parliament Roll of the 4 of Ric. the 2d. in the graunt of a Subsidy, where, I hope, they will not exclude the Bishops; the words are, **Les Seigneurs & Communes li sont assentez**, the Lords and Commons do agree; and the words in the Roll, in a Capital case, of Sir Ralph de Ferrers in the same Parliament, are **Semblables as Seigneurs du Parlement que le dit** Dr.

Mr. Rauf estoit innocent. It seemed to the Lords of the Parliament, that Sir Ralph was innocent. The words **Seigneurs, & Seigneurs du Parlement**, are the same. As in the case of Lyons where the Bishops were present under the general words, **Seigneurs du Parlement**: And in the case of the Lord Latimer, where the Bishops were present, 'tis said, And soon after the Commons having this Answer of submission, prayed the **Lords of the Parliament**, in the behalf of the King: And afterwards, and the Lords answered there unto, &c. And that these words, **Lords of the Parliament**, are generally not particularly to be understood of the Lords Temporal only, will appear, plainly from the Lady Periers case, Anno 1 Ric. 2. who in that Parliament was caused to come before the Prelates and Lords to Answer certain matters, &c. And after the rehearsal of a judgment made against the said Alice Periers, &c. The Lord Steward surmised to the said Alice that it seemed to the **Lords of the Parliament**, that she had incurr'd the pain compriz'd in the said Ordinances, and had forfeited, &c. Where the Prelates as well as the other Lords Temporal are expressly here called, **Seigneurs du Parlement**, which was the thing to be proved. Nay, I dare undertake to give an hundred instances in the like kind, for the present I add no more.

1 Ric. 2. William de Weston, and John de Gomenitz were Tried in full Parliament, for Num. 38. and 39. of the Parliament, 'tis thus said, **Et benez & lieuz la dit cedula en plein Parlement.** And they came and read the said Schedule in full Parliament, and before that Num. 29. **Quelle petition lue &c. dist fust & commander en cest Parlement per les Prelates & Seigneurs piores du Parlement.** Which petition was brought and commanded to be read in the Parliament by the Prelates and Lords, **Peers of Parliament.** And afterwards on Friday, &c. **A quel jour de vendredy lez ditz Johan & william amenes per la dit Constable devant les Seignours abanditz en plein Parlement.** The said John and William was brought by the said Constable before the Lords aforesaid in full Parliament; and again, **Samedi, &c. per quoy les Seigneurs abanditz en plein Parlement vous aigent a la mort.** Here I must confess it seems doubtful who these **Seigneurs abandits**, Lords aforesaid were; for that Numb. 29. the words are, the Prelates, and Lords; Peers of Parliament; and Numb. 38. and 39. the Schedule was brought into the full Parliament; and that upon Friday the prisoners were brought before the Lords aforesaid, in full Parliament; and there was named the Duke of Lanc. and several Earls and Lords, **& plusieurs autres Seigneurs, Barons & Bannerets**; Many other Lords, Barons and Bannerets, &c. and on Saturday they are said to come before the Lords aforesaid again, and that too in full **Parliament**, where they were adjudged to dye. I say, to me it seems doubtful (others perhaps may be of another opinion) who these Lords aforesaid were, whether the Prelates, as Numb. 29. when they and the others commanded it to be read, &c. or the Lords particularly named; and **plusieurs autres Seigneurs** under which very probably the Lords Spiritual might be comprized; I say, who these Lords aforesaid were, it is not clear from the Roll of Parliament.

1. Because it is no where said the Bishops did withdraw.

2. The judgment and answer of the prisoners was given in full **parliament**.

ment, and when so a thing is done I think all the Estates must be present.

3. The Prelates, as in the cases foregoing, may be and are frequently comprized under these common words *Seigneurs*, or *Lords*; and I am not yet satisfied that the Bishops are ever named first in order, especially in such cases as these whereof we now treat, and at which they were not frequently, and I am persuaded do not now desire (if their just Rights may be preserved and kept intire to them and their Successors) to be present; and I am in this point much of this Gentlemans mind, when he saith, pag. 105. *I do not think it any part or degree of Honour to judge Men to Death, it is certainly an employment which in my opinion no body will envy to any that hath a right to it.*

The case ensuing next on the Roll is that of the Lady Alice Perers, who as Sir Robert Cotton saith, was brought before the Lords; but as the Roll of Parliament hath, *sait venir devant les Prelates, & les Seigneurs du Parlement pour y respondre, &c.* She was made to come before the Prelates and Lords of the Parliament to answer, &c. where you see he makes no distinction twixt Prelates, and Lords of Parliament. Her crime was that she contrary to an Act made in the 50 Ed. 3. being there expressly prohibited, had prosecuted Suits in the King's Courts, &c. and particularly in the case of Richard Lyons; hereupon the Ordinance was caused to be rehearsed by Sir Richard Scrope, by the Order of the Prelates and Lords, in the presence of the said Alice, she was adjudged to be banished and to forfeit her estate; of what ever extent her crime might have been (for by the by 'tis not, nor can always be known, either to its nature or hainousness, before Trial; and so the Bishops were frequently, as is most probable, present at such debates) however here they were confessedly present.

3 Ric. 2. The Merchants had killed John Imperial a publick Minister, this was a great affront and disgrace to the King and Nation; hereupon complaint being made to the Parliament, an Act was drawn by the Judges in the King's presence, and of the Lords Temporal. *En presence du Roy, & des Seigneurs Temporels en le parlement.* Well what then! Why they were not present when the Judges were preparing it; grant they were not, was it pass'd without them? This argues against the Bishops legislative power, which this Author grants in several places of his Book, pag. 104. and 118. &c. but now he seems to forget himself.

4. Ric. 2. Sir Ralph Ferrers Knight, was Arrested by the Duke of Lancaster, on the Marches of Stotland, for suspition of Treason, for that he held intelligence with the French, the King's enemies, and had wrote divers Letters of correspondence herein with the Earl of Longovile, the Lord Clifton, and others; upon which the matter is brought into Parliament, where he was (as our Author and the Record saith the same too) acquitted. *Sembles ley Seigneurs du parlement que le dit Mr. Raut estoit innocent.* It seemed to the Lords of the Parliament that Sir Ralph was innocent. Here our Anthor saith, *Can any Man think the Bishops were there, and*

comprized under the general expression of *les Seigneurs du Parlement*, Lords of Parliament? I answer, yes very well, they were called Lords of Parliament, as before in the Trials of Richard Lyons, and Lord Latimer; For 'tis expressly said, That Lyons being sent for before the Lords of the Parliament, *Seigneurs du Parlement*, it was then said to him, that it seemed to the *Seigneurs*, Lords, that his offences were so great and horrible, that he had not sufficient wherewith to make satisfaction, &c. But you may see, to avoid repetition, the Bishops before in those cases before mentioned, proved in sundry Records, to have been called Lords of Parliament, whither I remit the Reader; only minding our Author that if he had consulted the very Record of Parliament, out of which this Trial is taken, he would have there found the word *Seigneurs* to include both Estates, and that in the grant of a Subsidy. *Les Seigneurs & Communes si sont assentues*, &c. The Lords and Commons do assent, &c. Except he will exclude the Bishops from voting in the granting Subsidies, which I hope he will not do. The same proved, 1 H. 4. n. 5. Henry de Percy Earl of Northumberland and Constable of England, demanded of the Lords and Commons whether they did agree to the continuance of the Parliament; &c. the 17 Ed. 4. n. 1. and in infinite other places, except this Gentleman will say, which is indeed to beg the question, that they are Lords in all other things but not in the Judiciary of Parliament? If so, I refer to *Mautraverses's* case where the word *Peers* must express some noble Men or other, there were no Dukes present, and Counts and Barons comprize the Lords Temporal; what then can *Peers*, who are there and in the three following cases, *Juges du Parlement*, comprize except the Bishops? So that even in Capital cases the Bishops were present of necessity, for the word *Peers* is expressive of somewhat; and if you peruse the Catalogue of the Lords summon'd to Parliament, 4 Ed. 3. you will not find one Duke, for the first of the Temporals is Thomas Earl of Norfolk, by his place Marshal of England, and then John Earl of Cumberland the King's Brother, and it is closed by John de Sherleton, and Barthol de Burghershe Warden of the Cinque Ports.

The next case is that of the Bishop of Norwich, for his ill management of an expedition undertaken by him into France, 7 Ric. 2. sundry misdemeanors are charged upon him, as the mispending the King's Treasure by them received, and that an account might be given of it, and the residue if any employed to the King's use; the Bishop protesting earnestly his innocency herein, desires his Trial, and that he might openly give an account in Parliament before the Lords of that undertaking, where he fully purgeth and acquitteth himself; but at last another charge of 10000 Franks of Gold for the delivery of *Grave*, is charged on him, of which yet he did very well acquit himself. And at last what I desire may be taken notice of, that for these his misdemeanors he was adjudged to make fine and ransom to the King, and to have his Temporalities seized, and that the Judgment was passed on him by the Lords, by assent of the Parliament, where I hope the Author will not deny but that there were Bishops present. See Cott. Abr. 7 Ric. 2. Numb. 23.

Rot.

Rot. Parliamenti 10 Ric. 2. m. 4. & 5. In this Parliament all the Commons with one accord, and in one assembly, came before the King, Prelates and Lords, *devant le Roy, Prelats & Seigneurs*, complaining grievously of Michael de la Poole Chancellor of England; accusing him by several Articles, and amongst the rest I find an accusation expressly insisted on by the Commons against the Chancellor for bribery, and they parallel his Case with that of Thorp chief Justice, before mentioned, and prayed Judgment against him according to the Condemnation of the said Thorp, which was for a crime Capital. In manner following, And to the answer of the fifth Article, the Commons prayed again, proposing the example of one Will. Thorp late chief Justice of the King's Bench, furnishing that he took 20 l. of one party who had an Office in plea before him, and for that he sold the Law, for which cause he was Judged to Death, and forfeiture of his Lands and Chattels, and say in so much as the said Earl was so Chancellor, and took an 100 l. &c. of the said provision there provided to be delivered out of the King's Hands of his profits, which he ought to have done according to the Command of the King, freely without taking any thing, it seemeth to them that he hath sold the Law, and prayen Judgment. The Bishops here are expressly said to be present, which our Author confesseth, and yet the crime Capital; and not the least mention made in the Roll of their withdrawing as our Author surmisseth they ought to have done in cases of that nature.

Now at last we come to the main of our Controversie, viz. the Parliament of the 11 of Ric. 2. where the five Lords appellants, the Duke of Gloucester, Earls of Derby, Arundel, Worcester, and Earl Marshal, made their open and solemn protestations, that what they now undertook touching their appeals, was for the honour of God, safety of the King, and Realm, and their own Lives. Hereupon the Archbishop of Canterbury, and all the Bishops of his Province, made their protestation likewise openly and solemnly, and the Bishops of Durham and Caerlisle did the like afterwards. *Quelle protestation leue en plein Parlement al instance & prier dudit d' Archevesque, & les autres Prelats susditz est enrolle pcyen Rolle du Parlement per Commandement du Roy & assentz de Seigneurs Temporels & Communes.* Which protestation being read in full Parliament, at the instant desire of the Archbishop and other the Prelates aforesaid, was entered upon the Roll of Parliament [not journal only of the House of Lords] by the Commandement of the King and the Assent of the Lords Temporal and Commons. Which is all the formality of passing Laws in Parliament, as our Author saith, pag. 23. which was used in those times, which was only to have it entered upon the Roll, that such a thing was agreed upon by the King and the two Houses, then it was drawn into the form of a Law, afterwards by the Justices and King's Council when the Parliament was risen. And to this opinion of our Author doth Mr. Prinn in his Preface to Sir Robert Cottons Abridgment, and I think every body else agree, his words are, The Rolls of the Parliament were engrossed and made up by the Clark of the Parliament, with the assistance or supervising of the Lords and Judges and Commons too when there was occasion. Now our Author goes on, pag.

pag. 23. as above. So whatever was the Law before, it is now come to be the Law and Rule of Parliament and the Law of the Land. But in truth (saith he) it was so before, and was always so. This is the *Cardo Controversie*, the hinge on which this Debate turns. Now what this Law is, you may see it fully and faithfully set down and compared with the Parliament Roll in the Records in the Tower, which is a thing which never yet hath been done neither by this Author, nor a later who it seems hath wrote after the same Copy [but of him more afterwards] if it had been this Controversie had been at an end. It is in pag. 7, 8, 9.

For first, the former of these Authors doth confess the whole truth, that it is a formal and essential Act of Parliament, but the later is neither in this nor in other matters half so ingenious; for he, page 24. Of his discourse of the Peerage, &c. will not acknowledge it any more than a naked protestation, and that in it self is no argument of right, neither doth the permission or allowance of any protestation yield that right which the Protestor is desirous to save, but is only (as he saith in his *Gothick Language*) an *Estoppel*, in plain English, a hindrance of the concluding any matter. But pray (good Sir) was this only an Act of the House of Peers? Was it not done by the assent of the House of Commons, and the King's command? Which is usually *Le Roy le veult*, nay did not the Clerk of the Parliament, Judges, King's Council, &c. enter it accordingly [not only as a meer formal protestation in the House of Lords Journal] but in the Roll of Parliament it self, where all other Acts (but no protestations) are entred, let the discourser, if he can, give us an instance of any thing that was not a confessed Law, that ever did in so solemn a manner pass the King and both Houses assent; and besides let him read the Parliament Rolls in the Tower (to which I find him utterly a stranger as shall afterwards appear so, that he that runs may read him) and I promise my self he will then find himself mistaken, and that Mr. Prim said right as before. That the Judges, King's Council, and Clerk of the Parliament, engrossed and made up the Rolls of Parliament, as before, &c. And that formal protestations never passing the King and two Houses were never put into the Parliament Roll. Let this discourser reflect upon his own instance of the Bill against provisors, under Ric. 2. doth he find though the Clergy, as he saith, opposed this Bill, their protestation in the Roll enter'd by the command of the King and the assent of the two Houses of Parliament, I trow not. And so much for the present of him, who I hope before his next attempt will learn to distinguish between a Journal Book, and a Parliament Roll.

But to put the matter out of all question, and for this last Authors fuller information, he may know the very last time the late learned Lord chief Justice Hales did sit on the Bench, there was a *Nullum tale Recor-dum* pleaded; and the Defendent said the matter pleaded to be an Act of Parliament, was only a Petition, (for all Laws which began in the Commons House, as Sir Edw. Coke observes were so drawn) and that it had not the

the Kings **expres Command**, his **roy le brult**, which yet is here; and therefore the Defendants Counsel thought and insisted upon it also that it was no Act of Parliament. But the Lord Chief Justice overruled their Plea, and said, It was a good Act of Parliament, for it was enroll'd in the Parliament Roll, and certified by the Clerk of the Parliament upon Oath into the Chancery, as an Act of Parliament, and therefore so it was to be held; else all the Rolls of Parliament, on Record either in the Chancery or the Tower might be questioned, as they ought not (if the Rolls had not been such as they pretended) to be held in that veneration which they are; neither ought the Master of the Rolls any longer to be stiled, *Sacrorum Scriniarum Magister*.

In the next place let us come to the consideration of what is here granted and proved to be a Law.

And II. It is granted that by the Law and custom of England, **De iure & consuetudine regni Anglie**, That it doth belong to the Archbishop of Canterbury, for the time being, and all other his Suffragans, Brethren and fellow Bishops, Abbots and Priors, and all other Prelates whatsoever, who hold by Barony of our Lord the King, to be personally present in all Parliaments whatsoever, as Peers of the Kingdom, and there to Consult, Treat of, Ordain, Constitute and Determine of the Affairs of the Kingdom, and other things there usually Treated of, together with the rest of the Peers of the said Kingdom, and others having interest there. And to do all other things which there may happen to be done. Here the words are so expres and full that there are five points in controversie decided.

The first is; that the Bishops by the Law and custom of England are to be personally present in all Parliaments whatsoever to determine of the affairs of the Kingdom and all others there usually treated of [I hope impeachments are such as these now in question] together with the rest of the Peers of the Kingdom that have interest there; and to do all other things that may there happen to be done.

The second Point is; That they are Peers of the Kingdom [the reason is given] because they hold by Barony, and therefore have right to treat of, ordain, &c. of the affairs of the Kingdom and all others there usually treated of, together with the rest of the Peers of the said Kingdom.

The third point, That their Estates and order being saved to them in time they did intend and will be present in this present Parliament and all others as Peers of the said Kingdom.

The forth and most material is, where they give their reason why they cannot be present in the present Parliament, is because some matters will there be treated of in which it is not lawful for them according to the institutions of the holy Canons or law Canonick to be personally present, therefore they protest that they intend not as by Law they cannot. Now pray Gentlemen what Law is here meant, the Law of the Land, or Canon Law, is it not the Canon Law immediately preceding? It cannot be the Law of the Land spoken of in the beginning of the Protestation, for by that they say they can be present in all Parliaments, and all debates whatsoever in Parliament, and that by that Law they will be present in this Parliament. Pray let the Bishops speak sence, and not be thought to contradict themselves, certainly they knew much better; whereas

both these Authors would wrest those words of the Protestation and make it to speak contradictions, clearly against the main scope and import of it; for the reason here given why they absent themselves, is because (such matters treating of Blood) are debated of and upon that account, say they (not by the Law of the Land we cannot, for by that Law, say they, we may as before) we will absent our selves, &c. But how?

Fifthly, They will absent themselves, *The Right of their Peerage, and the Right of every one of them being present in the said Parliament, as to all and every thing there to be done, agreeable to their Estates and Order, in all things to every one of them saved entire.* That this is the expresse words and clear meaning of this Record and Law, for it is so acknowledged and (I think) well proved too; the former of these Authors saw, for in pag. 19. he saith, *That the Bishops absented themselves from Parliament, in regard such matters, (viz. impeachments) were to be there agitated but with a Salvo to their right: Which some (saith he) will have to be understood of a Right to be present when those matters were in agitation, but this (saith he) could no ways be their meaning, but they protested their having a Right to sit and Vote in Parliament upon all other occasions in the general.* No, Sir, by your favour not only so on all other occasions, but in all things whatsoever any other Peer might Vote in. And now I shall shew the reader what these two Authors have left out of this Protestation, and leave it with him to guess at the reasons of their so doing: *All the beginning is wholly left out, which is the most material part of the Law, for Ratio legis est anima legis, the reason of the Law is the soul of the Law (as the Civilian saith).* Whereas by the Law and Custom of the Kingdom of England, It doth belong to the Archbishop of Canterbury for the time being, and the other his Suffragans, Brethren, and fellow Bishops, Abbots, and Priors, and all other Prelates whatsoever, who hold by Barony of our Lord the King, to be personally present in all Parliaments whatsoever, as Peers of the Kingdom, and there to Consult, Treat of, Ordain, Constitute, and Determine of the Affairs of the Kingdom and other things there usually treated of, together with the rest of the Peers of the said Kingdom, and others having interest there; and to do all other things which there may happen to be done. Secondly, *The Reason given on what account, in ea parte, they absented themselves left out, to make way for their interpretation of their de Jure non possumus, which as before is understood of the Canon Law, that they might have it understood of the Law of the Land, contrary to the expresse words of the Protestation in the beginning of it; whereas the words in ea parte refers to matters of Blood that were then in agitation, and upon which account the Bishops declined to be present.* *Jure Partitis nostre, & cujuslibet eorum interessendi in dicto Parlamento, quoad omnia & singula inibi exercenda nostris, & eorum cujuslibet Statuti & ordinis congruentia in omnibus semper salvis,* omitted. If these Gentlemen say, that they had occasion to expresse no more of this Protestation, I must agree with them herein, for indeed as the Reader sees it is not for their turn, and makes against them and overthrows whatever they have writ; for indeed had this *confest Law* been faithfully set down, and translated into English as faithfully, all our pains had been saved,

ved, and the World not amused with a Controversie, the generality of the people, so little understands.

20 Ric. 2. One Thomas Haxey Clerk, preferr'd a Bill in the House of Commons for regulating the expences of the King's House, complaining that many Bishops and their servants, and many Ladies likewise and their company, lived in the King's family and at his Charge. This case is not capital, as any Body may see, yet the King taking the matter in evil part, as he had reason so to do, and for that the Bill had it seems found reception in the House of Commons, the King was exceedingly moved at it, and by his own mouth declared to the Lords, that it was an offence against him, his Dignity and Liberty, and willed the Duke of Lancaster to say so much to the Speaker of the House of Commons, and that he should declare the name of him that so exhibited the Bill; and the Bill was delivered, and the name of the Exhibiter, by the Clerk of the Parliament to the Clerk of the Crown. After which the Commons came before the King, and shewing themselves heavy of cheer, and declaring that they meant no harm, they submitted themselves to the King and craved his pardon. See Sir R. Roper Abr. p. 362. Notwithstanding which Haxey was Tried and Condemned as a Traitor, as to the Justice of it I say not, for in *H. 4.* that Judgment was repealed as erroneous, as being against the right and the course of Parliaments; and the Bishops, I do believe, refused to be present at it, and I commend their prudence, for otherwise it might have reflected upon them and their order; but afterwards I find them interceding to the King for him, for the Record saith (as our Author likewise hath it) *fast a remembrance que Desquerds apres le Chancelure maintenant apres le Jugement rendu dovers Thomas Haxey que fust ajuggez en Parlement a la mort come Traitor, &c. vindrent devant le Roy avec grand humilite l' Archevesque, &c.* He is remembered that Wednesday after Candlemas day; immediately after Sentence was passed against Thomas Haxey, &c. the Archbishop of Canterbury, and the other Prelates, came very humbly before the King, and besought the King to have pity and compassion upon the said Haxey, and to remit his execution which the King granted. From all which our Author collects only this, that the Bishops was not present at an irregular condemnation, for so it is said to be, in *H. 4.* *En cointre droit & course que aboit este devant en Parlement.* Against justice and the course of Parliaments. And if they were not present, he knows the old Rule, *Liceat unicuique recedere a suo jure.* Every Man may forbear for a time to use his right, if he sees a reason for it, and his so doing doth not prejudice him, but his right remain to him secured upon the highest security, of a confessed Act of Parliament; And so the case was here, and that it was the right of the Bishops to be present at such judgments in Parliament it will appear, for that in the very next Parliament which comes now to be spoken of. I find the whole House of Commons with their Speaker solemnly and openly before the King, in open Parliament, asserting the same, and saying there had been many erroneous judgments given, and they repealed for their absence, and therefore they desire of the King that they

they would appoint some to be their common Proctors, with sufficient authority thereunto. Come we now to the Parliament which was held.

21 Ric. 2. In this Parliament *Thomas Arundel* Archbishop of *Canterbury* was impeached of high Treason, and it was desired by the Commons that he should be put into safe custody, and because it touch'd so great a person, the King answered he would be advised, however the Commons went on with their impeachment; and that what they were going about might be firm and establish'd, and not void when it was done, for so they thought it would be, if the Bishops did not give their consents at the judgment, they prayed the King, as before, that they would appoint some to be their common Procurator with sufficient authority thereunto, which they did three several times in this Parliament. The first time was at this impeachment of the Archbishop of *Canterbury* when they appointed Sir *Thomas de la Percy*, who was afterwards in this Parliament created Earl of *Worcester*, who accordingly in their behalf when judgment was given against him, gave in his Suffrage with the rest of the Lords against him. *Sur quoi nostre dit Seigneur le Roy & toutz les Seigneurs Temporels & Mr. Thomas Percy etant poar sufficient de la Prelatz & Clergy du Royaume de Engleterre come piert le record en le dit Parlement adjudgerent & declarerent cest Articles conuz per ledit Archevesque pur Traison.* Upon which our Lord the King, and all the Temporal Lords, and Sir *Thomas de la Percy* being sufficiently empowered from the Prelates and Clergy of the Kingdom of *England*, as appeareth upon record in Parliament, judged and declared this Article acknowledged by the Archbishop to be Treason, &c. 'Tis acknowledged that the Bishops were not here personally present, but that they were represented by Sir *Thomas de la Percy* their Procurator sufficiently authoriz'd, and this shews (saith our Author) That the Bishops, as Bishops and Clergy men, could not be there in their persons. 'Tis granted they thought they could not be there, and they give the Reason in the Protestation, in the 11 R. 2. why they could not, because they were prohibited by the Cannons of the Church to be present; *dum de hujusmodi materiis agetur, while matters of blood are in determination.* And that (as this Author saith) rather than they would be present, they appointed a Layman who was then no Peer, but presently after was, to be their common proxy. Well what then, suppose they did? Why it was an unusual thing. And so it is that the Bishops who are Peers of the Land, and Barons of Parliament, should not Vote, if they please to be present, in all affairs in Parliament, having common right with the other Peers. But it was never done but in that Parliament. And the Gentleman can give himself the reason why it was now done, because that divers Judgments had been repealed, for that they had not been present by themselves or Proctor; and that hereupon, because they the Commons would make sure work, they petition the King that he would cause the Bishops to do it. The second time it was done was when this Parliament was adjourned to *Shrewsbury*; it was there given it seems by Vote, only to *William le Scrope* Earl of *Wilts*, for the Roll of Parliament saith,

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Sur ce les ditz Prelatz & Clergy nomerent & ordenerent par bouche with. de la Scrope Conte de la Wilts commetant & donant a lui plein poir aussi abant & en manere come feust comys a Mr. Thomas de la Percy, &c. Upon which the Prelats and Clergy named and appointed in Parliament, by word of mouth, William de la Scrope Earl of Wilts, and gave him the same power, as full and in the same manner as before had been granted to Sir Thomas de la Percy. Here the matter of fact is agreed 'twixt the Author and my self, and he only notes, that it was given to Percy being a Commoner by Commission, and unto the Earl of Wilts by Vote openly declared, which is not material and so I pass it. The third time was in the same Parliament, in the business occasioned by the quarrel of the Dukes of Hereford and Norfolk, when as our Author hath it, (the Record saith the same) the whole matter was referr'd to the King to be by him determin'd, by the advice of certain Lords and Commoners there named, and to them were joyned as the Bishops Procurators the Earls of Worcester and Wilts. All he hath here to object is, that this argues a great unanimity in the voting of the Prelates. And suppose it do, must they loose their Rights because they all agree in these two Earls to entrust their Votes with? I hope not. Yes, but this is unparliamentary, a thing never practised. And this Gentleman knows it was done at the instant prayer and petition of the House of Commons, that their proceedings might be valid and not afterwards questioned in future Parliaments. This they expressly say themselves, and it was done accordingly by the Bishops at the Kings command. But now comes the great Answer of our Author, which like a Torrent sweeps down all that we have said at once.

Affyrinus magnam Euphrates vim volvit aquarum;

At multa illuvie fœdâque it turbidus ulva. Callimach. Hymn. 2.

The Stream 'tis confessed is strong and heady, but the water not so clear: And here I must put this Gentleman in mind of our fifth Postulatum, and his concession which I before told him I should make use of; 'tis in his 75. pag. That there ought to be a distinction made betwixt the matter of a Law and the manner of its enacting; the thing in question betwixt this Gentleman and my self was, about the manner of passing those Laws, in the 21. of Ric. 2. whether they were not good Laws for that the Bishops did not personally Vote there but by their Proxies; he saith, *their so voting was irregular, unparliamentary, and what not, and that the whole Parliament it self is repealed in the 1 Hen. 4.* And no wonder if it was there repealed, this Gentleman saith, *that both he and the two subsequent Kings were Usurpers, and the 1 Edw. 4. saith, they were Kings in fact and not in right, and so they were;* no marvel then, I say, if that Parliament of 21. of Ric. 2. was repealed by H. 4. for this Author very well knows that the proceedings in that

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Parliament of 21 of Ric. 2. were just and lawful, being against those Traitors who went about to depose their lawful Sovereign R. 2. and that it was in favour of them and their heirs, that that Parliament was repealed by Hen. 4. whom he calls an *Usurper*, and who indeed was not lawful King, and who could do no less than do that act of favour, or rather *injustice* for so it was, to requite his friends who had but justly suffered for his title under their then lawful Prince and Sovereign. And the Roll of Parliament of 1 H. 4. gives the true reason in these words. *Item prient les Communes que Come Richard jadis Roy de Engleterre second lan de son regne vint & premier fist arrester Richard nadgaires Count d'Arundel & de Surrey (en plein Parlement) & autres Seigneurs de Roialme a cause de leur droit cel Justice, loial counsil, & governance quilz aliterent & desirerent toutz ditz al Corone & as loialx lieges du Roialme, &c.* In like manner pray the Commons, that whereas Richard the second, late King of England, in the one and twentieth Year of his reign did make to be arrested Richard late Earl of Arundel and Surrey in full Parliament, and other Lords of the Realm, for the cause of their righteous Judgment, loial Counsel and Governance, which they manifested and desired to manifest to the said Crown, and as loyal Subjects of the Realm, &c. Here is the true reason given of the repeal of the Parliament, they had been tampering against their lawful Prince, to set up an Usurper, as he calls him, and were lawfully impeach'd and condemned in that Parliament for their Treasons; hereupon the Commons interceding for them, pray their restitution in Lands and Blood, which ever in such revolutions as these were was most usual. And now to give our Author a sight of himself, and to bring him, as Alexander did his horse to the Sun that he might not kick and start at his shadow; he saith, that in the 4 of Ed. 3. Roger Lord Mortimer Earl of March was condemned as a Traitor, and he will say it was regularly and Parliamentarily done, for that he was (he saith so) adjudged only by the Lords Temporal, and yet this Judgment was reversed for the Errors thereof in all points in the Parliament, 28 Ed. 3. Cott. Abridg. 85. And so by his way of arguing the Judgment being annulled, it should be for the manner of its passing, which as he saith, was by the Temporal Lords only: in like manner Ric. Earl of Cambridge was condemned, in the 3 H. 5. for Treason by the Duke of Clarence and other Peers, Earls and Barons at Southampton, and that Judgment afterwards brought into Parliament, and there ratified in full Parliament, where the Bishops were present, which I desire this Author to take notice of; and yet all these proceedings were repealed, 1 Ed. 4. I suppose this Author would not say that it was done for the form of Judgment passed on him by the Duke of Clarence, and the other Peers of Southampton, for this was very regular (will our Author say) it being done by the Temporal Peers only, and afterwards ratified in full Parliament, but it was for that he was of the Yorkish party, and in that Line was the right of Succession, and therefore in Justice he ought, as he was in his Successor restored by Ed. 4. In like manner the Duke of York and the other Earls who fought in the battles of

St. Albans, Blorebeath, and Ludlow, were all Attainted and Condemned for Treason, &c. as before I intimated, p. 29. and their Lands in fee and tail forfeited, and yet these proceedings were repealed (being nothing deficient in form) in the following Parliament of the 39th of H. 6. for that the House of York was then going to be restored to the Crown; I might be infinite herein, but these are convictions enough to this Author, that there was no deficiency in the forms of proceedings, but for that these matters which were formerly so transacted, in favour or out of justice to the sufferers, were again brought on the stage retrieved and repealed. So that we willingly grant that this Parliament of the 21 Ric. 2. is repealed in that of 1 H. 4. who in truth was not lawful King, but it was not done because the Bishops made Proxys (as he weakly argues) in that Parliament; but because these Men had embark'd with H. 4. in an evil cause, against their lawful Sovereign, and so when he came to the Crown he could do no less in gratitude, though in justice he ought not to have done it, neither ought they to have been rewarded for this their rebellion; but only so it was then done, and right was trodden underfoot, by the power of an Usurper. Moreover I would desire these Gentlemen to take notice that what was here done by the Bishops as to their absenting themselves and making Proxys, it was done by the King's command and at the petition of the House of Commons.

Pour quel diverse juggements & ordonances fait en le Reignes de la predecessors du Roy en Parlement, &c. for that diverse Judgments and Ordinances made in the Reign of the Kings Predecessors [not only in the case of the Spensors, 15 Ed. 2. immediately Predecessor to this King, but in the Reigns of his Predecessors in the plural, so that it was oftner done than once] and the words are diverse Judgments and Ordinances of the King in Parliament have been repealed and adnull'd, for that the Clergy were not present in Parliament at the making thereof; the Commons prayed the King that for security of his Person, and the preservation of the Realm, the said Prelates and Clergy should appoint a Proctor with sufficient power to consent in their names to such things as should be done in that Parliament; they had before in the Parliament of the 11 of this King's reign, given the reason why they could not be present at such Trials [as before] pag. 8. and what they now did was the King's express command at the Commons request; and for the reasons aforesaid (for that diverse Judgments, &c.) and by the assent of both Houses of Parliament. Yes, but saith this later Author, the discourser, that this was a palpable mistake de facto of the House of Commons, pag. 26. and again, saith he, it was an unaccountable, a very strange oversight, in the House of Commons at that time, pag. 27. that they became Innovators on so false a ground, &c. and thus 'tis usual with these Authors to answer Arguments and Precedents, which otherwise are unanswerable, that they are Irregular, unparliamentary, unusual, Errores temporis, extravagant, &c. As the first Author, pag. 28, 30, 79. &c. and as to this later, that they are palpable mistakes in the House of Commons, that they are strange and unaccountable oversights, Innovations upon false grounds, pag. 26, 27. Now pray Gentlemen is this the way to answer

answer the Arguments and Precedents, by telling the very Gentlemen of the House of Commons, who then were and knew all the circumstances and reasons of their own actings, that they were much mistaken, that they acted irregularly, unparliamentarily, were extravagant, and innovators, &c. were they not likelier to know much better of these things then your selves, who are but Men of *these last and puny times*. Gentlemen, I will take the liberty to give you a very (I think) pertinent instance in this matter, I pray take it not amiss, for I intend no reflection upon any person or party of Men. You know, or I presume may have heard, that a very great Lawyer Sir *Edw. Coke* was of opinion in the 4 *Instit. pag. 10.* that *Walsingham* a grave and sober Historian, who wrote of his own times and things then transacted, and of which he either was or might have been an Eye or Ear witness, had been guilty of a great mistake, error and untruth, in saying that Common Lawyers were excluded by expresse words in the King's Writ of Summons to the Parliament of 6 *Hen. 4.* Certainly the Historian then living, and being knowing, nay curious in those things, might probably be thought to know the truth hereof, better then Sir *Edw. Coke* who lived some hundreds of Years after him, however Sir *Edw.* in the place before quoted, doth confidently charge the Historian with an untruth; whereas indeed he himself was in the mistake. For the words in the Writ are, and now to be seen in the Tower, *Nolumus autem quod tu aut aliquis alius Vicecomes regni nostri aut Apprenticius libe aliquis alius homo ad legem aliqualliter sit electus.* The application or *reason* hereof is obvious, here were the whole House of Commons (not a single Historian only) openly avouching matters of fact of their own or immediate preceding times, openly contradicted by an Author, I am sure far inferior to Sir *Edw. Coke*, they say it was done as before, *in divers Judgments and Ordinances of Parliament. And in the Kings predecessors time, not only in the time of Edw. 3.* This Author very confidently saith it was done but once, in 15 *Ed. 2.* and how much he is to be trusted even in this shall after appear; they lived in the times when these matters were agitated; this Author lived a Century of Years very near after Sir *Edward*, and some hundreds after the House of Commons, to whom he doth in effect give the Lye. Let the reader say who of these are likeliest to speak truth. And so far for that Parliament. I come in the next place to that of 1 *H. 4.* where we shall find one *Rickill* one of the Judges of the Common Pleas, who had been sent to *Calais* to take the Confession of the Duke of *Gloucester*, call'd to give an account of that matter, he was under arrest for it, and was brought into the Parliament to do it; against him the Author here confesseth, p. 31. *that there was neither charge, nor impeachment so the Bishops might be and were present at his examination; but mark our Author, they must (saith he) have no hand in giving any Judgment upon it, because it might have been preparatory to an accusation and impeachment.* Is not this plainly *showing* to serve an Hypothesis, he very well knows that the matter he was to prove was, that the Bishops are not to Vote in Capital cases in Parliament, and

and here they did assist at his examination; present they were he himself confesseth, and it seems he was not in any fault, if so there was no need of their being any farther present, nor for the Temporal Lords neither any farther to be so; and so I leave it to the reader to judge what this makes for his purpose.

In the same Parliament one *Hall*, a servant to the Duke of Norfolk, who had a hand in the murdering of the Duke of Gloucester at Calais, is brought into Parliament there to be Tried, for that by his own confession he had a hand in the death of the said Duke; the murder and the circumstances thereof is at large related in *Cottons Abr. pag. 400.* here needed no great pains to be taken to prove the fact upon *Hall*, who himself had openly and freely disclosed it; and confessed himself guilty of it; and here indeed I find no expresse mention of the Bishops being present at his condemnation, who 'tis very probably might not be there, but leave the matter to be transacted by the Temporal Lords, without any impeachment to their right, it being secured as before, as our Author saith, by the security of a confessed Act of Parliament, 1 Ric. 2.

2 *H. 4.* The next precedent our Author speaks to, was of one *William Sautre*, whom he calls our *St. Stephen* the Protomartyr of England (though I think *St. Alban* lived some hundreds of years before him) concerning him we find a Writ to have been directed to the Mayor and Sheriffs for his execution; 'tis well the then Popish Bishops did not sign that Writ, for else to be sure of it (though the Religion of our Country was then Popery and all our Ancestors equally blameable) the now Protestant Bishops must have been twitted with it. Well but what was then done? Why the Record is, *Item cest Desquerdy un Brief fut fait as Meir & Justicountz de Londres per advis de Signeurs Temporelz en parlement de faire execution de William Sautre.* This Wednesday process was made by the Temporal Lords that execution should be done on *William Sautre*. Now comes the Bishops charge, our Author saith, he doubts not but that the Bishops and Clergy of those times were the chief promoters of this; suppose they were, why then they acted in a capital Case, which makes against the Gentleman, if they were present at the judgment given against him, he hath brought a precedent against himself; but to say truth, here it doth only appear who signed the warrant for his execution, or at least ordered the Mayor and Sheriffs to do execution on him, and they were the Lords Temporal; so that by this the Bishops hath escaped this Gentlemans lash, having no hand in it; but who were his Judges *nondum constat.*

But in the same Parliament he finds the *Earls of Kent, Huntingdon, and Salisbury, the Lord le Despencer, &c.* declared and adjudged Traytors (though they had been taken and executed before) and their estates to be forfeited. Well! All this we grant: Here, saith he, were no Bishops present so much as to declare and judge it, a *Treason*, though the persons who had committed it were dead before: And this is also granted him, but how if I give him a parallel instance, where a person being condemned before, the whole proceedings (very

likely they wanted confirmation) were afterwards brought into Parliament there to be ratified, I suppose there was some reason of this being so done as is expressed: It was in the case of Richard Earl of Cambridge, and the Lord Scrope; the proceedings against whom were brought into Parliament, 3 H. 5. at the desire of the Commons, and were there ratified and confirmed, and the Bishops then were, our Author saith, [p. 118.] and might be present; for, saith he, *I look upon it as an Act of Parliament not attainting them, but confirming their attainder.* If so, then this Gentleman hath answered himself in a case parallel in all things, and the matter of fact by himself confest. And so we come to the Parliament of the 5 H. 4. where his argument is as weak as before: Here the Earl of Northumberland comes before the King, Lords and Commons, petitioning the King for pardon, for not keeping his Statutes and Laws, (as Legeance demandeth, &c.) Rot. Parl. 5 H. 4. n. 11: the Petition is in English, and there followeth, *which petition, by the Kings commandment, being examined by the Justices to have their Counsel in this behalf, upon the protestation made by the said Lords that the Judgment appertained to them only as Peers of the Parliament.* [Who these are, see *Mauravers* case and the protestation, 11 Ric. 2. before cited] to whom such judgments appertain of right to hear, &c. they adjudge that these things which the said Earl hath done are not Treason, nor Felony, but only Trespass, &c. Wherefore the said Earl most humbly reverenceth our Lord the King, and the said Lord the Peers of Parliament; concerning the right judgment, &c. Seld. Baron. pag. 106, 107, 108. This you may see at large in Mr. Seld. l. c. I have the rather made use of Mr. Selden for that he is known to have been no friend to the order of Bishops; however let any man judge if there is any thing in all these passages which do in the least give any pretence to any person whatever to argue from hence that the Bishops were not present; does it not strongly argue the contrary? Is he not said to come before the King, Lords and Commons, & that in the Parliament? See Cott. Abr. n. 11. Where the Lords make protestation that the order thereof belongs to them, and the Bishops are Lords of Parliament, is before proved, p. 54, 55. but here n. 15. most expressly, where they judge the action of Henry Percy, and others of his adherents, at the battail of Shrewsbury to be Treason. Item, on the said day, the levying of war of the said Sir Henry Percy and others, was adjudged Treason by the King, and Lords in full Parliament. But how doth it appear that the Bishops were present at either of these Judgments? I answer, it doth plainly appear that the Archbishop of Canterbury was present at the former judgment, for that he then in expresse words prayed the King, That forasmuch as he and the Duke of York, with other Bishops and Lords, were suspected to have been of the confederacy of the said Sir Henry Percy, that the said Earl would now publish the truth, whereupon the Earl by the King's command, upon his oath, purgeth them all thereof. Numb. 14. Cott. Abr. p. 426. And at the same time, Numb. 15. Sir Henry Percy's action was adjudged Treason by the King and Lords in full Parliament. There is no departure of the said Archbishop or Bishops mentioned, and it was done.

as is before expressed in full Parliament, when all the three Estates Lords Spiritual, Temporal, and Commons are present. Which is as Mr. Pryn observes, *Cott. Abr. pag. 710. Nota marginali*, Who I dare boldly say [upon the small acquaintance I have with them] knew better of Records, and what **plein Parliament** meaneth, than either of these Authors or twenty such as they: that *The three Estates must concur to make a Parliament, or else (King Richards) title would neither be valid nor satisfactory but ambiguous, as before, no one or two of them being a full and real Parliament but all conjoyn'd.* But of this I shall speak afterwards, when I come to make appear who are the three Estates of Parliament.

7 H. 4. A judgment was given (saith the Gentleman) much like that foregoing, in the 2 H. 4. when the Earls of Kent, Huntingdon, &c. who for levying war against the King, had been taken and executed, as the Earl of Cambridge was, 3 H. 5. whose condemnation and sentence was brought into the Parliament to be ratifi'd and confirm'd; which if it was done by Act of Parliament as that was, the Bishops must of necessity be present, for that no Act can pass without their being present, and therefore if this case (as the Author saith) was like the two foregoing cases, the proceedings against those Lords being brought into Parliament, there by an Act to be ratified, as before, and as he expressly saith, it was in the case of the Earl of Cambridge, p. 118. before cited; the Bishops were actually present thereat. And so we go on to the case of Sir John Oldcastle, 5 H. 5. who being condemned by the Archbishop of Canterbury for Heresie, as then it was reputed, and being moreover endited and outlawed in the King's bench for Treason; the Commons of England, *Ballerent un petition al honorable Prince le duc de Bedford, delivered a Petition to the honourable Prince the Duke of Bedford, then guardian of England, that Justice might be done upon Sir John Oldcastle according to his demerit, who indeed though perhaps not for his Lollardisme, yet for other great Crimes which he was then accused of (the murdering the King was not the least) whereof if he was guilty he might justly expect no other sentence to be given upon him than that which was then given against him by the Lords to be executed as a Traitor.* Now, who these Lords were, in the matter here in debate, they could not be (saith the Gentleman) after his accustomed manner the **Lords Spiritual and Temporal**, for then they would not have been so expressed in a general word **Lords**, in matters of Judicature, to which my answer is obvious, and the same which I have formerly given him (and that the matter in fact is so I have there also proved). That in the Case of Gomeitz, 1 Ric. 2. before mentioned they are comprized under the general word of **Peers**, that in the cases of Lee Lyons and Latimer, at which the Author confesseth, and indeed tis plain they were present, they are expressly called **Lords of Parliament**, as before is proved in their cases, whether I refer the Reader. As also it appears from Mr. Selden's *Baronage*, pag. 15. where supplication is made by the Commons, *that all those that have rendered and lost Castles or Towns may be put to answer, and according to their desert* throughly

thoroughly punished by the **Sword of the Lords and Baronage**, and that Allen Buxall (Constable of the Tower of London) shall cause to come before the **Lords of Parliament**, John Lord of Gomenitz, and William of Weston, who were brought before the **Lords of Parliament** accordingly. Now who were these **Lords of Parliament**, you have it in express words, Rot. Parl. 1 Rich. 2. Numb. 29. *Quelle petition lue, &c. dist fust & commandez in cest parlement per lez Prelatz & Seigneurs Pierres du parlement.* Which Petition or Bill (against the said Gomenitz and Weston) being read, &c. in the Parliament before the **Prelates and Lords, Peers of Parliament, &c.** Here the Prelates are **Lords and Peers of Parliament**, for that such offenders were to be punish'd by the **sword of the Lords and Barons of Parliament**, and accordingly were brought before the **Prelates and Lords, Peers of Parliament, &c.** before whom the Bill against the said Gomenitz and Weston was read, &c. Q. E. D. the same is before proved, likewise in the Earl of Northumberland's case, in the 5 H. 4. before mentioned, who was brought before the **Lords and Peers of Parliament, &c.** and the Archbishop of Canterbury then present, who then desired the said Earl to purge him and the other Lords and Bishops who were said to be compartiners in the said Treasonable actions with himself, who, &c. as before, V. case 5 H. 4. p. 114. It is exceeding tedious to repeat what before is proved, but the Readers patience is desired in regard both these two Authors (which yet is but a pitiful begging of the question) will not have the Bishops ever call'd **Lords** in the Judicatory of Parliament, and which yet, as the Reader may see, is altogether false and groundless.

2 Hen. 6. Sir John Mortimer of Bishops Hatfield in the County of Hereford Knight, was committed to the Tower upon suspicion of Treason against the King, and having made his escape, he was Tried and Indicted for the fact, at the Guildhall London, and the Indictment by the Kings command returned into the Chancery, and thence brought into the Parliament before the Duke of Gloucester, and the Lords Temporal, *luto liberatum, was delivered.* Well all this we admit, why then de *advisamento dictorum dominorum. Auctoritate istius parliamenti ordinatum est & statutum quod ipse usque ad Curiam ducatur, &c.* It was Ordained and Enacted by the authority of the said Parliament, by the advice of the said Lords Temporal, &c. The ~~he~~ should be led to the Tower and afterwards to Execution. Therefore the Bishops are not to Vote in Capital cases in Parliament, *non sequitur*, was not the matter here decreed, *Auctoritate parliamenti*. If so the Bishops were present, for they are an essential part of the Parliament, at which they are to be present, and to have their Writs of Summons issued to them for their appearance, *ex debito Justitie*, they are Sir Edm. Coke's words.

28 Hen. 6. Here we have a President beyond debate, confest by our Author, pag. 41. at which the Bishops were not only present, but they did then bear a principal part, in this judicial proceeding. *de* ~~an~~ *William de la Pole Duke of Suffolk, who was accused by the Commons of sundry Articles of Treason and misdemeanours, &c.* He was brought from the Tower, on the 6th of March, by the King's Writ into the Parliament Chamber, before the King and

Lords

Lords, when the Articles were read against him; and on the 14th of March he was again brought before the **King and Lords**, when kneeling on his knees he denied the said Articles, &c. Again, on the 17th of March the said Duke was made to come before the **Lords of the Parliament**, as Numb. 48, 49, & 50. of the said Roll of Parliament, in which I have been the more particular, for that now when there were no fewer than eighteen Spiritual Lords, and Peers of Parliament, who are all there named, (viz.) the two Archbishops, thirteen Bishops, two Abbots, and the Prior of St. John of Jerusalem, confessedly present; the expression is still the same, that the impeach'd person is said to be brought before **le Roy & Seigneurs du Parlement, le King and Lords of Parliament**. So that the Bishops are here comprized under the general words of **Lords of Parliament**, which both these Authors do expressly deny; the former, in pag. 36. the other in pag. 51. with confidence enough, It is most certain (saith he there) that the Prelates were never spoken of in any Record, but by the name of Archiepiscopi, Episcopi, &c. or Prelati, or some such name as doth distinguish them from the Laity. But with how little truth the Reader will now tell him. Though to do him right I shall subjoyn what follows, that if they be spoken of (saith he) they are always first named; and put before **Les Counts & Barons** as at this day, the Records are entered the **Lords Spiritual and Temporal, &c.** where his observation is good and agrees with the Truth, but then on another account he is misfortunate for this his observation proves inevitably that the Bishops were present at the four Trials mentioned, in the 4 Ed. 3. viz. of **Mau-travers, Bogo de Boyons, and Deverel, Thomas Gourney, and William Ogle**; where the Record runs as you may see fully before in those cases **Tre-tour, les Pierres, Countes & Barons, assemblez**. Where the word Peers occurring first will most naturally and necessarily, according to his own observation and the truth it self, signifie the Archbishops and Bishops, and for that there were no Duke or Marquess Summon'd to that Parliament; and that the words, **Countes & Barons**, do comprehend the Earls and Barons. I have insisted the longer on this observation, for that I find that 'tis these Authors ordinary *expedient*, or refuge, to say the Bishops must not be comprized under the general words of **Lords and Peers**, which yet you see proved, which indeed, as before is intimated, is but a shameful begging of the thing in question, and so I pass and come to the matter of the Protestation of the Lords Spiritual and Temporal, which was occasioned by the Kings taking the cause out of the Judicatory of Parliament, where it ought to have been Tried, and his determining of it in an extraordinary manner, which they deemed a breach of their Rights of Peerage, on which account both the Lords Spiritual and Temporal joyned in that Protestation, their common Right of Peerage being invaded and violated; now, as before, I intimated, pag. 14. the Temporal Lords would never have joyned with the Lords Spiritual in this Protestation, if they had then thought that Judgment in Capital causes had been their sole Right, for this had been to their disadvantage; for here

they avow the Right to be common to both Estates, Spiritual and Temporal, and that stands on the same foundation and bottom, (*viz.*) as before, pag. 25. *On account of their Perage, &c.* Which words were left out by the first of these Authors, and yet he gives you the words both going before and following after; and these you see do prove the Lords Spiritual to be Peers of the Realm, which he expressly denies in several places of his Book, pag. 7, 84. &c. and pretends to answer the arguments, which (as shall be made manifest he hath not done) do evidently prove the contrary. But these words in *case of their Perage, as freely as they in any of, &c.* made not, I think, for the Gentlemans purpose, and that therefore he omitted them; but whether it was fairly and ingenuously done, and with a design to speak the whole truth in this Controversie, or rather to tell his story all on one side, I must leave to the Reader to judge, and come to consider of his Answer which he gives to this so stunning precedent: 'Tis in short this, p. 48. *It is irregular and extravagant from the beginning to the end, that 'twas an odd and unusual thing, &c. And that 'twas all a Hodge podge of a Trial, and that no man can tell what to make of it, and that 'tis not of any signification to be a precedent or rule of proceedings in Parliament.* But pray, Sir, is this to answer? 'Tis possibly your opinion, but if you would have us believe you must give your reasons, which you never went about there to do, expecting we should take your *verba ipsa* for proof, which we are not willing to do; but shall consider of your Reasons when you are pleased to subjoyn them. Well but the Gentleman goes on and saith, *admit it to be regular it is but a single precedent of the Bishops Voting in a Capital cause against multitudes excluding them, &c.* I answer, I pray then let us go from the beginning and see, if we can, on which side the current runs.

1. Precedent is in the Trial of Roger Earl of Mortimer and others, 4 Ed. 3. which was an attainder as appears, 28 Edw. 3. where Roger of Wigmore, Cofin and Heir of that Earl of March, petitions the Parliament, that the proceedings may be reexamin'd, and repealed if found faulty, which was done accordingly, the Attainder repealed as being against *Magna Charta*. This was an Attainder and the Bishops were or ought to have been present at it, as our Author confesseth, p. 118.

2. Case is that of *Mautravers* where the Bishops are proved of necessity to have been present. *Vid.* the case it self, pag. 38.

3. Is *Bogos de Boyons* and *John Deverel*, where the same Judgment is given as before.

4. Is of *Gourney* and *Ocle* the Murderers of *Edw. 2.* the like Judgment upon them the same persons present.

5. Is of *Sir Thomas Berkley*, the Judgment was given in *pleno Parlamento*, and so all Estates present according to Mr. *Prinns* notion of *plein Parliament*, on *Sir Rob. Cott.* p. 710.

6. Case, 5 Edw. 3. the Bishops only say that it doth not properly belong, &c. but afterwards they came and gave their assent to an Act of Parliament

liament for the conservation of the peace, as the later of these Authors saith, p. 16.

7. Case, in the same Parliament is concerning a quarrel hapning in the King's presence, and how one of the quarellers laid his hand on his Sword. The Bishops are not said here to be present at the Judgment, and 'tis very likely they did not look upon themselves as very fit Judges of such quarrels, and so might leave it to the Temporal Lords, whom the King 'tis said did charge to give Judgment in this matter.

8. Case is Capital for Bribery, the Lord Chief Justice accused, who is there Judg'd by the *Grants*; a word signifying in general the Members of the House of Peers, as is I think plainly there proved, and so the Bishops might be present.

9. Is in the 42 *Edw.* 3. 'tis the case of Sir John Lee Steward of the King's household, and for misdemeanors, and the Bishops here are expressly said to be present.

10. In the 50 *Edw.* 3. several persons were accused of Crimes which were in the event but misdemeanors, but might have proved Capital, as particularly that of the Lord Latimer for loss of Forts, which was so judged in *Gomenitz* and *Weston's* case, at these the Bishops were confessedly present.

11. 1 *Ric.* 2. of *Gomenitz* and *Weston* the Crimes were Capital, the Bishops may very well be said to have been present, for that they were Tried in full Parliament, the Bill being commanded to be read by the Prelates and Lords, Peers of Parliament, and the Bishops no where said to withdraw.

12. Is of *Alice Perers* case, in the same Parliament, where the Prelates are expressly said to be present, as before in *Lyons*, *Lees*, *Latimers* and *Nevills* cases.

13. Is the case of *John Impenal* who being a publick Minister of *Genoa* was kill'd by two Merchants; an Act of Parliament was made against the like enormities for the future, and the Bishops were at the passing of that Act.

14. Is the case of Sir *Ralph Ferrers*, the crime was for corresponding with the King's enemies, but upon Trial he is acquitted by the **Lords of Parliament**, which words do comprize the Bishops and Peers, as is proved in this and other cases, as of *Latimer*, the Earl of *Northumberland*, 5 *H.* 4. and of others *passim*.

15. Is of the Bishop of *Norwich*, 7 *Ric.* 2. on whom Judgment was passed for misdemeanors by the **Lords**, by the assent of Parliament, where the Bishops as before are present.

16. Of *Michael de la Pole* Lord Chancellor, 10 *Ric.* 2. for a Capital Crime, (*viz.*) Bribery, at which the Bishops *in terminis* are said to have assisted.

17. Is concerning the Parliament of the 11 *Ric.* 2. where the Bishops were present by their Protestation. **Their Right of being present and of their Parage, quoad omnia & singula**, in all and every thing being to them reserved in-tire.

18. Is the case of *Haxey*, 20 Ric. 2. at which I do not find the Bishops present.

19. Of the Parliament, 21 Ric. 2. where the Bishops were present by their Proxies as is largely proved.

20. Is the case of Mr. Justice *Rikbill*, 1 H. 4. against whom there was no Charge nor Impeachment, and so there could be no Judgment given by any body.

21. Is the case of *Hall*, who murdered the Duke of *Gloucester*, at whose Sentence it doth not appear that the Bishops were present.

22. Is the case of *Sautre*, 2 H. 4. who was declared an Heretick, his Sentence of condemnation doth no where appear no otherwise than that there was a Writ framed in Parliament by the Lords Temporal for his Execution, but who were his Judges when condemn'd, *non constat*.

23. Is the case of the Earls of *Kent*, *Huntingdon*, &c. in the foregoing Parliament, who had been taken and Executed for levying War against the King. This Act of theirs was adjudg'd Treason by the Lords Temporal, and it doth not appear that the Bishops were present at the Judgment. Though, as I have here noted, they were in a case parallel to this of the Duke of *Cambr.* 3 H. 5. who was Condemned and Executed for Treason, &c. at *Southampton* and the Sentence confirmed after in Parliament, at which the Bishops were present.

24. Is of the Earl of *Northumberland*, 5 H. 4. where the Lords of Parliament make Protestation that the Right of Judicature belongs to them only, and accordingly by their Judgment he was acquitted, and at this Trial the Archbishop of *Canterbury* was, and therefore the rest of the Bishops were present also.

25. Is the case of Sir *Fohn Oldcastle*, 5 H. 5. who in this Parliament was by the Lords adjudged a Traitor; and that the Bishops are Lords of Parliament, see proved before, in the Earl of *Northumberland's* case immediately preceding, and also in other cases before that.

26. 2 H. 6. Sir *Fohn Mortimers* case, against whom the Lords in Parliament having found the Indictment, he was by request of the Lords and Commons but by Authority of Parliament condemned, &c. and therefore the Bishops were present.

27. Case is of *William de la Pole* Duke of *Suffolk*, 28 H. 6. where our Author confesseth (the Case being Capital) that the two Archbishops, thirteen Bishops, two Abbots and the Prior of *St. Fohn of Hierusalem*, in all seventeen Spiritual persons were present.

And thus far we have gone along with our Author, and do refer it to the Reader whether our Author may be believed, when he saith, p. 49. *That the Bishops never voted but once in a Capital Case, and that this was the constant course and practise of Parliaments.* I am of opinion that there are as many Precedents on the part of the Lords Spiritual voting, as for the Lords Temporal only, in the mean time *penes aquum lectorem sit judicium*, and so I go on to the few cases remaining; the next is of the Earl of *Devonshire*.

31 H. 6. he was Tried upon an Indictment before *Humphrey* Duke of *Bucks* Steward of *England*, for that time assigned (of Treason) before his Peers, the noble Lords of this Realm of *England*, and was acquitted. Pray see what our Author hence argues: 'Tis this, *Now I suppose no man will say, that the Bishops were neither his Peers nor Lords of the Realm*: which is, as before, to beg the question, and I think both of these are sufficiently proved in the case of *Mauntravers's*, *Gomenitz*, in the Protestation in the Parliament of 11 Ric. 2. in the Earl of *Northumberland's* case, &c. but of the Bishops Peerage more hereafter.

38 H. 6. The Lord *Stanley* was accused of being confederate with the Duke of *York*, the King answered, *he would be advised*, and so the matter ended, and so the Precedent is not to the purpose.

In the next place, our Author comes to the Earl of *Straffords* Trial, where the Bishops withdrew, and declined their Suffrages, but had their Protestation entered; *That their absence should not prejudice them of that nor any other Privilege competent to them, as the Lords Spiritual of Parliament.*

I shall only take leave to mind our Author of two Trials more, and the cases Capital, and the proceedings are well known.

The first is, of the Earl of *Clarendon* who was impeach'd of high Treason, and the question being put whether he should be committed, it was carried in the negative, and that the Bishops then voted.

The second is, of the Earl of *Pembroke*, when they sat and debated the whole matter untill the Sentence was to be pronounced.

Our Author likewise, *pag. 55.* mentions another case, which was that of *Nicholas de Segrave*, who was Summon'd, for his leaving the King's camp in *Scotland*, to answer the offence in the Parliament of 33 of *Edw. 1.* where he acknowledged his offence, and humbly submitted himself to the King's pleasure; *venit in pleno Parlamento in presentia ipsius Domini Regis Archiepiscopi Cantuariensis & plurimorum Episcoporum, Comitum, Baronum, & aliorum de consilio suo, &c.* He appeared in full Parliament, &c. where I desire our Author would take notice what a full Parliament is (*viz.*) when all Estates are present, as before, I have noted; and that in the next place, here was no Judicatory of Parliament, but of *Segrave*, 'tis said in the Record, that *in presentia ipsius Domini Regis & aliorum omnium predictorum omnia antedicta sibi imposita expresse cognovit ac voluntati Domini Regis de alto & basso se submitit.* He acknowledgeth his fault, and submitteth himself to the King, and that the King pardoned him, *de advisamen- to Comitum Baronum & Magnatum & aliorum.*

And now we come to the case of *Becket*, in the Parliament of *Northampton*, 11 H. 2. wherein *Becket* was adjudged by the Bishop of *Winton*, by the King's command, when the other Lords did not agree who should do it, upon a crime Capital, 'twas *Lese Majestatis*, as *Stephanides* a grave and sober Historian hath it; but this Book (our Author saith) was wrote by one much suspected for partiality, and that he was a creature of *Becket's*, *p. 63.* and he calls his Book, a blind Manuscript, sure I am Mr. *Selden*, and all other Antiquaries I ever yet read, have had another much better opinion of *Fitz-Stephen*, but his authority is against his Hypothesis, and 'tis usual with him on such occasions to let fall such expressions to vilifie Testimonies and Precedents when they make against him; but that he may not do it altogether without reason he tells you, *that other Authors do not make mention that he was accused for treason.* I answer, though others do not, must therefore a grave Historians Testimony be invalid, may not one Author supply the defects of another, are all circumstances or matters of Judgment equally and alike known to all reporters? Is it a good argument to say such an Author or Authors say it not, therefore the thing is not so. The Gentleman hath forgot his Logic. *Argumentum ab autoritate non valet negative.*

Here then immediately after the so much celebrated Council of *Clarendon*, we find a Bishop pronouncing a Capital Sentence upon another Man of his own Order, which makes it clearly to appear, and which I desire our Reader to take notice of, that upon the King's command, *who is their natural Leige Lord*; they, the Bishops, ever did in succeeding times receive Commissions, and acted as chief Justiciaries and in other places of Judgment too, as they ought to do: for though the Prince may indulge some Priviledges to his Clergy, (as this of not compelling them to Vote in cases of Blood in Parliament, where by the Canon Law they are prohibited) which must yield to the Law of the Land, and cannot devest the King of his right of using any of his Subjects (*Clerks or not*) in any places of employments he shall think fit to employ them in, or in which he may think them capable of doing him or the publick good service: No, Sir, this is a piece of Popery which our Bishops have with the rest rejected. A Clerk, when he is made such, doth not cease to be the Kings liegeman and Subject; nay, let me tell both these Authors, that the Popish Clergy (though

some of them at some times, have not been so dutiful to their Sovereigns as they ought) have generally deserved better than they have been represented by these two Authors, for even in these Critical Times when *Becket*, countenanced by the Pope, was endeavouring to erect *impetium in imperio*, and the Pope and his Clergy, as *Doderidge* saith, and *Sir Edw. Coke*, and *Selden* from him; the former 2 *Inst.* 631. the later, *Titles of Hen.* p. 582. *That the King's Prerogative, and the Peoples Right, was going about to be infring'd by the Pope and Papalins aforesaid, endeavouring particularly to make Clergy-men no Subjects to their Princes, but to the Pope only; even then, I say, we find the Body of the Clergy of this Nation openly adhering to their Prince in the quarrel against Becket, and consequently the Pope, also giving great commendations of their King, and aggravating the crimes and excesses of Becket. See their letter to the Pope, in Baronius, An. 1167. § 43. Finding, say they, the peace of the Kingdom not a little molested with the outrageous excesses of insolent Clerks, and having with due reverence to the Clergy reserr'd their offences to the Bishop, and these excesses (say they there) being only punished by degradation, and the King thinking this no sufficient punishment for such offences; hereupon the King not with any conceit of oppressing the Peoples Liberties, but with a desire of confirming peace, the King would produce to light the customs of his Kingdom and dignities antiently observed, and quietly and reverently yielded unto by persons Ecclesiastical, to former King's in the Kingdom of England, to the end that the thred of contention might be no longer spun, the King would have the same openly known; wherefore the most antient Bishops and great Peers of the Realm, being first sworn by their faith and the hope which they had in Almighty God, searching into the state of forepassed times and the dignities of the Crown being sought into were laid open; they were by the testimonies of Men of the greatest account in the Kingdom published and made known. " See here (say they) the cruelty of our Lord the King against the " Church of God, which hath so much been spread abroad over the whole " World! Behold here his persecution! And these are the works so divulged for wicked both here and every where! And then they go on to enumerate the bitter provocations of *Becket*, his Treasonable actings against his Prince, &c. and the Kings patience towards him; they thus conclude for their Prince against *Becket*, *If the King's humility be so requited, what shall be determin'd against the stubborn? If the ready devotion of obedience be esteemed so slightly, in what manner shall wilful obstinacy be revenged? &c.**

In like manner when King *John* in unkingly manner had subjected his Crown and Kingdom to the Pope, by his Legate *Pandolpho*, who were greater sticklers against that base Act, and the Popes title acquired by such a slavish subjection than the then Popish Prelates were: See for this the Patent 17 of King *John* m. 15. dorso; where the King expressly complains of that their gallant behaviour, and true Spartan courage for their Country in that affair. Item *Domino Pape, &c.* In conspectu paternitatis vestre humiliamus ad gratias multiplices prout melius scimus & possumus exhibendas pro cura & solitudine quam ad defensionem nostram & Regni nostri Anglie paterna vestra benevolentia indefinenter apponit, licet Duritia prelatorum Anglie atque Inobedientia malitiose impediunt pie vestre provisionis effectum. Afterwards he calls the Bishops, *Superbi & malevoli, &c.* Item to our Lord the Pope, &c. In presence of your Fatherhood we prostrate our selves giving you manifold thanks as we are able, for your care and pains in defending us and our Kingdom of England daily applied, although the stubbornness of the Bishops of England as well as their disobedience, do maliciously hinder its desired effect, &c. Afterwards calls them proud and selfwilled, &c.

Moreover, whereas the Pope used frequently, that he might get all Presentations as well of Bishopricks, as other Ecclesiastical Preferments, into his own hands, to remove all Causes to Rome, prohibiting any persons either Ecclesiastical or Civil from intermedling for or touching any Presentations, and if they did, to excommunicate them, &c. This being against the Right of the Crown as well as Municipal Law of our Kingdom, I find a solemn and open Protestation of that worthy Prelate *William Archbishop of Canterbury* 16 Ric. 2, against the Popes Usurpations,

ons, Provisions and Excommunications in *England*; to this effect: *In the Name of God Amen; we William Archbishop of Canterbury, &c. do solemnly make this Protestation in open Parliament, &c. saying, That the Pope ought not to excommunicate any Bishop, or intermeddle for or touching any Presentation to any Ecclesiastical Dignity recovered in any of the Kings Courts, &c. And further we Protest That the Pope ought not to make any Translations to any Bishoprick within the Realm, against the Kings will; for that the same was the destruction of the Realm and Crown of England, which hath always been so free, as the same hath had none earthly Sovereignty, but only is subject to God in all things touching Regalities, and to none other. The which Protestation he prayed that it might be entred, and it was done accordingly.*

Not to add that the Popish Bishops in *H. 8.* times were ever as active and forward in hindring Appeals to *Rome*, in taking away the Popes Supremacy, and setting it upon the King, 26 *H. 8. c. 1.* as any other Laicks were; and as I cannot much commend the Ingenuity of these Authors, in not taking any notice of what the Bishops of that perswasion did do well in defence of the Crown and the Law, obliquely reflecting on all occasions almost on the Order itself, if they did any thing ill; so I should be equally faulty should I go about to excuse or palliate their Failings in siding with the Popes, and relinquishing their Sovereign's Interest. So then to return from whence we digressed, I would desire these Authors to remember, that even in those times the Canons of the Church, or Decrees of the Popes were not look'd upon by the then Bishops and Clergy as universally and indispensably obliging. And that it was so, we have here a clear Instance of *Becket's Case*; wherein the Bishop of *Winchester* pronounc'd the Sentence by the Kings Command, in *October* following the Recognitions of *Clarendon*, which were pass'd in the Moneth of *February* preceding; so that I do believe the Bishop did not forget that he had sworn to observe those Constitutions, being but so short a space of time before, as the former Author saith, p. 61. But that I think that the Bishop did look upon the 11th. Article of that Assize to have been in favour of his Order, and That his Priviledge of absenting himself was there recogniz'd in favour to his Order, and out of respect to the Canons of the Church, but that his Jurisdiction in Parliaments [or out of Parliaments, if called thereto by the King,] was not in the least limited. And this that was the true meaning of that Article, the History and Circumstances of those times, as well as the Bishops practice in those times, do evidently make it out; for as I said before, the Pope was endeavouring to make all Clergy men his own Subjects, and independent of their Natural Princes: but in regard that the then Bishops were his Subjects; and also held of the Crown *per Baroniam*, they ought and did obey his Commands, *facere Consuetudines Regias, observe his Laws, interesse judiciis Curie Regium cum Baronibus, to assist at the Kings Court with the Barons, and in the Judgments too, in Judiciis; in Math. Paris, to be present in the King's Court with the Barons in Judicio, in the Judgment; so Gervasius Doroberniensis; But how far? till Sentence of Life or Limbe be pronounc'd. And this is clearly in their favour, and for that they were Clergy-men, the Priviledge was indulg'd them; yet so, as not to divest the King of his Natural Right to command his Subjects upon any Emergency, to serve him when he should be called forth by the King's Command; for the Bishop in his withdrawing, could only prejudice his personal Right in respect and reverence for the Canon; but he ought not, neither did he or could he do any thing in prejudice of or derogatory from the Allegiance he owes to his Liege Lord and Sovereign; and that this was so, [the practice of the Prelates makes it out: for here we see the Bishop of *Winton*, notwithstanding any Prohibition in the Article [which indeed is none] or Obligation from the Canon, upon his Sovereign's Command, pronouncing a Capital Sentence on *Becket*. And in the 25 of *H. 2.* Not long after that *Roger Hovenden* informs me, p. 337. That *Postobitum Ricardi de Luci* [he was Chief Justiciary of England] *Dominus Rex Pater magno celebrat Consilio apud Windeshores, Archiepiscopos. Episcopos. Comitum, Baronum divisit Angli-**

niam quatuor partes, & unicuique partium prefecit Viros sapientes ad faciendam iustitiam in terra, & ad audiendum clamores populi. That the King after the Death of Lucy Chief Justiciary, in a great Parliament at Windsor, divided England into four Parts; over each of which, he appointed wise men to do Justice in the Land, and to hear the Complaints of the People. Who these Wise men were that were then made Judges, it there follows: Over **Suthantewire**, Ricardus Episcopus Wintonia. In **Cantebrigire & Hunte-**
dunire, Gaufridus Eliensis Episcopus. Nicolaus Capellanus Regis, & Nicolaus de **Wise-**
bec Capellanus Regis. In **Sussex**, Johannes Episcopus Norwicensis; Hugo Mur-
doc Clericus Regis, &c. These were Clergy-men, and made Justiciaries shortly after the Council of Clarendon; and that men of that Order have all along acted as Lord Chief Justices of England, may at large be seen in the *Honours of the Clergy*, Chap. 5. and Sir William Dugdale's *Origines*. So that the meaning of this Law will be best understood by the practice of the Prelates: for would the King, Temporal Lords, and Commons (think you) have suffered so manifest a violation of this Law immediately after its Enacting; all Estates solemnly swearing to the Observation of it, I presume you will not say it. But for these Gentlemen's farther Conviction, they may please to know that the Popes Canons (though much endeavoured here by his Legates) was not received by our then Bishops; and for this they may see a Decree of Pope Alexander in Roger Hovenden, Anno 25. H. 2. forbidding all Clerks either to plead as Advocates in any Secular Courts, or to be Justiciaries of any Secular Princes. Clerici non debent Procuraciones saculares suscipere, &c. Coram seculari Iudice in negotiis forensibus Advocati esse non presumant, — Nec Jurisdictiones saculares sub aliquibus Principibus aut secularibus viris ut Justiciarii eorum fiant Clericorum quisquam exercere presumat. And yet notwithstanding these Papal Decrees, in the very same year the King makes the Bishop of Winton, Norwich and Ely, his Justices; and the same was done all along in the Reigns of his Successors, Nay moreover that the Canon of the Council of Westminster, held by Richard Archbishop of Canterbury 21 H. 2. mentioned and set down in Hovenden ad annum dictum, was no bar to the Kings using his Bishops as Justiciaries, or to them acting as such, may appear that at this very time, 21 Hen. 2. the Practice was otherwise. And because we have frequently spoken of this so famed a Canon, I will out of Roger Hovenden subjoin it. Clerici in sacris Ordinibus constitutis iudicium sanguinis agitare non licet, unde prohibemus ne aut per se membrorum truncationes faciant, aut inferendas indicent, quod si quis tale fecerit concessi Ordinis, privetur officio & loco, inhibemus etiam sub pena Anathematis ne quis Sacerdos habeat Vicecomitatum aut Prepositi Secularis Officium. Where you see they were not only forbid by this Canon to judge in matters of Blood, but to be employ'd in any Secular Government; and whether this was so in the use, these Authors may easily satisfy themselves: were not the Bishops of Durham and Ely Prepositi seculares? Are they not such at this day, and have not other Prelates in every Kings Reign been commanded to undertake such like Offices?

There are only two Particulars more I am to speak to, and then I shall have done with the Gentleman our first Author, and afterward our Reader shall have a brief but full account of the second Author, the Discourser and his Book, his weakness in Argument, as well as Mistakes in Precedents.

As to the former Author, I shall prove 1. That Bishops are Peers of Parliament.

2. The Lords Spiritual are one of the three Estates of the Realm; both of which he denies.

For the First; it is proved from the general Stile of all Parliaments, which run thus in the Saxon times. **Commune Concilium Cleri quam Populi**, of a Parliament of King Ethelbert, An. 605. Spelm. Conc. p. 126. King Ina's Parliament was held *per commune Assensum omnium Episcoporum, &c.* An. 612. The Grand League, was made *per commune Concilium & Assensum omnium Episcoporum, Procerum, Comitum &c. & per preceptum Regis Inæ*, Bed. Eccl. Hist. l. 1. The same may be seen all along in Spelman and Lambard, whither I refer the Reader for his full satisfaction; where he will find the Bishops always named first and principal members of all Parliaments,

ments, the same in the *Danish* Government, in the Laws of King *Cnut* which were made *cum consilio & decreto Archiepiscoporum Episcoporum, &c.* The same under the Conquerour who held the Parliament *Anno Regni sui 5to.* were present *Episcopi, Abbates, Comites & primates totius Angliæ.* Math. Paris in Willielm. 1. The same under his Son. *Will. 2. Anno Regni 90. De regni Statu acturus Episcopos, Abbates & quoscunque Regni proceres, &c.* *Eadm. Hist. l. 2.* The same under *H. 1. Malmesbur. Hist. Reg. Angl. l. 5.* and under *H. 2.* in *Hovenden* at the deciding the Controversy betwixt the Kings of *Cassile* and *Navar.* And so downward all along they are ever the first order of Men in the Parliaments, and are put before the Lords Temporal, and so they must be **Peers of Parliament.**

2. For that they are in several Rolls of Parliament, expressly so called in the case of *Mauntravers. Pierres de la terre et Juges du Parlement.* Vid. Case before, in the Case of *Gomenitz and Weston. 1 Ric. 2. Quelle Petition &c. commandey en cest Parlement per les prelatz et Seigneurs Pierres du Parlement,* as before in that case. Nay long before this they affirm to the Lords Temporal in Parliament, *H. 2.* as Mr. *Selden* reports, [the Parliament was held at *Northampton.*] *we sit not here as Bishops only, but as Barons, we are Barons and you are Barons, here we sit as Peers.* In the Protestation of the *11 Ric. 2.* so often spoken of. *ut pares regni predicti: again in the same, ut pares regni predicti more solito interelle & Jure paritatis nostre & cujlibet nostrum interessendi, &c. semper salvis, &c.* In the Parliament of *28 H. 6. In case of our Parage hereafter as Italy and as largely, &c.* Where both Estates Spiritual and Temporal, do joyn in that Protestation, which (as before) the Lords Temporal would never have done to their disadvantage, if the Bishops had not had equal right both in the Peerage and Judicatory.

3. The Bishops are Peers for, [as hath been proved] they do not only sit in House of Peers, and are so called in the Rolls of Parliament, but that they have Judged as Peers upon Peers of Parliament. Upon the *Lord Latimer 50. Ed. 3.* Upon *Michael de la Pole 10 Ric. 2.* Upon the Lords in the Parliament of the *25th.* of the same King, by their Proxies. Upon the *Earl of Northumberland, 5 H. 4.* Upon *William de la Pole* in the *28 H. 6. &c.* Lastly they are proved to be Peers by the Statute of the *25 Ed. 3. Teignent leur temporaltes du Roy en chief et pertant sunt Pierres de la Terre.* For that they hold their Temporalty in chief, and are therefore Peers of the Land. Which our Author saith are Expressions by the by, *obiter dicta.* That which I think nothing can be more close and home, for that is the reason of the Petition that they are Peers, though not of Personal Nobility, but only feodal. Which distinction if these Authors had well understood, they would easily have apprehended why Bishops are Tryed by a Jury of Commons, which is a thing *de Jure Communi,* and doth not reach their Peerage, as Mr. *Selden* clearly proves in his Baronage. p. 143. Whither I refer these Authors where they will find their Arguments answered, and this matter fully proved, that the Bishops are Peers of the Land, and that particularly *& in terminis,* that the Argument is naught, to say **Spiritual Barons are not Peers, and therefore not to be Tryed by their Peers,** for saith he, *the antecedent is false, i. e.* and that they are Tryed by Men of the same condition saith he is for that the Statutes must be Interpreted according to practice and the known use of legal Proceedings, pag. 153. so that it is a matter *de jure communi,* that the Bishops are so Tryed and the reason of the usage I take to be for that *their Blood is enbled they being only Feodal Barons.* And also that the Bishops are Peers is proved by the Common Law very fully in the *Honours of the Clergy,* p. 30. And in Mr. *Seldens* Baronage, p. 143, 144, &c. And all the answer our Author the Gentleman in his Letter gives to these, is that the Judges only had a mind to Complement the then potent Clergy, &c. p. 104. I had thought the Judges had been sworn to do Justice and not to Complement, and favour any persons of what rank soever they be of, if the Author is of another Opinion, I cannot help it.

2. That the Lords Spiritual and Clergy (whose Procurators according to that ancient Piece *Modus tenendi Parliamentum*) are ever held Members of the Parliament

though denied to be so by the Author, p. 88. for that they act not in Legislation, which by the way, is no reason, for that they may well be said to be a part of the Parliament, for that they represent the lesser Clergy, in giving of Aids and Subsidies; who else were in a worse condition than the meanest Clown who can expend 40 s. *de claro per Annum*, having no body else there to represent them, but their Proctors as before. That the Bishops and Clergy, I say, are a Third Estate, not only of the Kingdom, but of the Parliament too, (for here the Author is very Metaphysical in the Distinction of these two, which yet are but one and the same; and so as we use to say, he makes a Distinction without a Difference) I hope will be clearly proved from the Bill exhibited in the Roll of Parliament 1 Ric. 3. *Die Veneris tertio die Januarii, Anno Regni Regis Ric. 3. primo &c. Memorandum Quod quedam Billā exhibita fuit, Be it remembred that a certain Bill was exhibited &c.* containing in writing certain Articles of the Tenor under written on the behalf and in the name of the **Three Estates of this Realm of England**, that is to say, the Lords *Spiritual and Temporal*, and of the **Commons by Name**. Now forasmuch as neither the said Three Estates, nor the said Persons which presented and delivered, &c. were **Assembled in Form of Parliament**, by reason whereof diverse Doubts and Questions, &c. have been moved, &c. Therefore to the perpetual Memory of the Truth & Declaration of the same, be it Ordained, Provided & Established in this **Present Parliament**, That the tenor of the said Roll with all the Contents of the same, presented as is above said, in the Name and in the behalf of the said **Three Estates out of Parliament**: Now by the said 3 Estates assembled in this present Parl' and by the Authority of the same, be it Ratified, Recorded, Enrolled, Approved and Authorized to the removing of the occasion of Doubts, &c. Where the Estates of the Land or Realm and of the Parliament, you see are the same, for all the niceness of our Author's Distinction, *Q. E. D.* And as to his Objection, That if the Bishops are an Estate in Parliament, then it would follow, That no Law could be made without their consent: The Consequence is ill; for here the Custome of Parliament (and he knows that **Consuetudo Parliamenti est Lex Parliamenti**) is otherwise: and that the Two Estates of Lords Temporal and Spiritual make but one House of Peers, where they Vote intermixedly, and that neither have a Negative on the other, but all things pass there by Majority of Votes. And so in the next place I come to take an Account of a Book Entituled **A Discourse of the Peerage and Jurisdiction of the Lords Spiritual in Parliament**, &c. And here I fancy my self to be in *Aristophanes* his *Νεσλοχονυσία*, A City of certain Birds in the Clouds, where Cases and Discourses are mooted purely Airy, having no other bottom than Vapor, Smoke and Cloud; this Discourse (he pretends) stands upon these two Legs, and whether they are able to support the Body of this Book comes now to be considered.

The first is that the *Lords Spiritual Voting in Capital Cases*, is contrary to the intent and meaning of *Magna Charta*.

The second that it is contrary to the known Practise of all Ages to this day. The first he endeavours to prove by reason, the second by Precedents, let us see how well he acquits himself. For the first, 'tis ordain'd saith he, p. 2. by the 29th. of *Magna Charta*, that *Nullus liber homo capiatur vel imprisonetur &c. Aut utlegetur, aut exuletur, aut aliquo modo destruetur nec super eum ibimus nec super eum mittemus, nisi per legale iudicium parium suorum*. Where saith he it is evident that every Judge must be a Par to the Prisoner but a Spiritual Lord saith he, is not invested with that Parity which is requisite by *Magna Charta*, to constitute him a Judge upon the Life of a Temporal Lord. And p. 4. and 5. he gives us the reason why he is not so invested with such a Parity, because [the Lords Spiritual Peerage] is only *prædial and fædal*, not *personal*, his Blood being not enobled, but his Nobility accrewing to him only *ratione Tenura*, because of his Barony, and so not having Noble Blood to loose, he cannot be a Judge of Persons of Personal Nobility.

I answer 1. How if it appear that Persons whose Blood were no ways enobled, [such were *Banquerets* and Knights of the Bath,] have actually and *de facto* Judged of such whose Blood (as he saith) were enobled, and were Men of Personal Nobility? **Consuetudo**

tudo Parliamenti est Lex Parliamenti. What then will become of this Worthy Authors aery argument. I must and shall tell him that they which are called by their Prince into the House of Peers, though perhaps *pro se vice tantum*, it may be twice or thrice, and never afterwards, and therefore their Blood being not Enobled nor Men of that Personal Nobility, as our Author speaks, yet these Men have Judged upon Temporal Lords, v. g. Upon the Earl of March, &c. And upon others in other times. Such were *John Mautravers Junior* 4 E. 3. *Sr. John Peach* in the same Parliament, *Radolph de Camoys* no Baron, was in the same Parliament. *John de Cromwell* was only a Knight in the same Parliament, for that Family were not yet Barons. *Thomas Bardolf* in the same only a Banneret, neither of the *Furnivals* were in that Parliament Barons, *William le Blount* in the same Parliament no Baron. *Hugh Ponitz* only Knight of the Bath, and Banneret in the same Parliament, more particularly *John Lord Gominitz* was Judged. 1 Ric. 2. (the Case as before was Capital,) by *Sr. Richard le Scrope* Steward of the Kings House: Duke of Lancaster, Earles of Cambridge, March, Arundel, &c. **Et plusieurs autres Seigneurs Barons & Bannerets eussent au dit Parlement, &c.** And by many other Lords, Barons, and Bannerets, being in the said Parliament, &c. This Authors mistake was in this, that he did not rightly understand the Constitution of the Ancient Parliaments, but measured them by those of this Age, where none but Barons are usually call'd into the House of Peers, but formerly it was otherwise for any person of Note and Eminency, whom the King pleased to call, and of whose Wisdom and Integrity the Kings had no cause to doubt, might have a Summons to Parliament, but their descendents were not thereby entitled to an Hereditary Right to sit, [and so their Blood was not enobled,] forasmuch as tis evident that not only through the Reign of King Edw. 3d. But afterward for a long time some there were who never had more than one Summons, and others though more, yet not their descendents, &c. *Sr. William Dugdale* Baronage, Tom. 2. Preface. Such were those before mentioned, 4. Ed. 3. and *Thomas Musgrave* Summon'd to Parliament, from the 24. to the 47. Ed. 3. He was no Baron nor ever after Summon'd, *John de Molins*, 21 Ed. 3. was Summon'd never after. *Robert and Alexander Hilton* only twice in the 6. and 9 of Ed. 3. *John Hauked* in the 6. 8. and 9. Ed. 3. never after, *Roger Lassels* but once. 23. Ed. 1. *William and Walter, Valvasors* of *Torkshire*, the former in the 28. Ed. 1. the latter in the 7. Ed. 2. *William Fitz-William*, the 1 Ed. 3. never after, *Nicholas Dauney* 1 Ed. 3. never after; *Thomas de Pipe*, 1 Ed. never after. *Sir Adam de Creting*, 1 E. never after. *Hugh de Meisnil*, 1 E. 3. not after. *Roger de Swynnerton*, 11 E. 3. Nor he nor any of his Posterity ever after. *William de Kerderton* was Summon'd from 11 Ed. 3. till 34. None of his Posterity ever after. *Adam de Swilington* from 20 Ed. 2. till 2 Ed. 3. Never after, nor any of his Posterity. And the like I might add of several others of the Parliament of 4 Ed. 3. wherein there were five or six Capital Judgments, and the far greater number of those who were summoned to the Higher House were Peers, though no actual Barons, who yet were Charged with the Articles against *Mortimer* and *Beresford*, and therefore Judged upon them. The Words of the Record are, **Les queux Countes, Barons & Peers les Articles per eux examinez revindrent.** Which Earls, Barons Peers having examined the Articles return'd. Where the Word **Peers** following that of **Barons**, must be understood as is usual, of persons of inferior Rank and Order to the Barons, and therefore of none other than the persons before spoken of

2. I answer, The Words of *Magna Charta* are general; *Non capiat, imprisonetur, ut legetur, non super eum ibimus, &c.* and do not only respect Capital Cases, but others, which may be of Misdemeanors, where Judgment may end in Fine or Ransom, &c. At which yet the Bishops always acted, as the Author will confess: Such were the Case of the Lord *Latimer* 30 Ed. 3. of the Bishop of *Normich*, 7 Ric. 2. *Michael de la Pole* 10 Ric. 2. & *William de la Pole* 28 H. 6. &c. So that by the Authors Argument they must be excluded not only in Capital, but other Cases also, against the Law and Custom of Parliament. And here our Author hath made himself an eminent and signal Example of a person vainly arguing from a Statute, when the Matter of
FaEt

Fact was otherwise; and therefore the greater part of his Book is insignificant; He might have known that *Lex currit cum praxi*; That *Practise and Usage is the best Comment on the Law*. It is not what he thinks by an inconsequential way of Arguing, to be the meaning of the Law, but 'tis the Custom and Usage which is the best Interpreter of the Law, and that would have taught him the true meaning of that Article of *Magna Charta*, upon which he hath so weakly and unfortunately argued.

I omit to speak to what he hath taken out of Mr. *Selden's* Baronage about the Trial of Bishops by a Jury of Commoners, for that (as Mr. *Selden* there saith, and at large proveth) maketh nothing against their Peerage; and I add Jurisdiction also; for that (as is before said out of Mr. *Selden*, where our Author might have seen his Answer) is a thing of *Fure Communi*, that Bishops are so tried, and the reason (I conceive) is well given (*viz.*) Because their Nobility is not hereditary, but only *feudatory*, & *ratione Tenura*. So that this Author might have saved himself the labour of replying to the Answers he mentions, p. 9. about their degradation, and not answering before *Lay-Judges*, &c. for this is absolutely the *Magical Combat* in *Apuleius*, Where the man thinking he had fought with his Adversary all night, in the morning he found himself engaged with a few empty Bladders. No body I know of is here his Adversary, and if he please he may fight on, and reap (if he finds any) the Benefit of his Conquest.

2. He undertakes to prove that the Bishops Voting in Cases Capital is against the practise of all Ages to this day; and that here he is as unfortunate as before, is at large proved through most of the foregoing Trials in this Book particularly treated of; and whither for a full Answer he is remitted; whence I do believe and hope that both the Reader and these Authors also will receive full satisfaction and resolution of the *Vexata Quaestio*.

3. He undertakes to prove that the Bishops Voting in Cases Capital is against the practise of all Ages to this day; and that here he is as unfortunate as before, is at large proved through most of the foregoing Trials in this Book particularly treated of; and whither for a full Answer he is remitted; whence I do believe and hope that both the Reader and these Authors also will receive full satisfaction and resolution of the *Vexata Quaestio*.

4. He undertakes to prove that the Bishops Voting in Cases Capital is against the practise of all Ages to this day; and that here he is as unfortunate as before, is at large proved through most of the foregoing Trials in this Book particularly treated of; and whither for a full Answer he is remitted; whence I do believe and hope that both the Reader and these Authors also will receive full satisfaction and resolution of the *Vexata Quaestio*.

5. He undertakes to prove that the Bishops Voting in Cases Capital is against the practise of all Ages to this day; and that here he is as unfortunate as before, is at large proved through most of the foregoing Trials in this Book particularly treated of; and whither for a full Answer he is remitted; whence I do believe and hope that both the Reader and these Authors also will receive full satisfaction and resolution of the *Vexata Quaestio*.